No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JOEL RIVERA-ALEJANDRO,

Petitioner

Vs.

UNITED STATES OF AMERICA

Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

APPENDIX

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Copy Citation

United States Court of Appeals for the First Circuit

June 30, 2021, Decided

No. 17-1432, No. 17-1551, No. 17-1681, No. 18-1184, No. 18-1496

Reporter

4 F.4th 1 * | 2021 U.S. App. LEXIS 19508 **

UNITED STATES, Appellee, v. IDALIA MALDONADO-PEÑA, Defendant, Appellant.UNITED STATES, Appellee, v. JUAN RIVERA-GEORGE, a/k/a TIO, Defendant, Appellant.UNITED STATES, Appellee, v. SUANETTE RAMOS-GONZALEZ, a/k/a SUEI, a/k/a SUANETTE GONZALEZ-RAMOS, Defendant, Appellant.UNITED STATES, Appellee, v. CARLOS RIVERA-ALEJANDRO, Defendant, Appellant.UNITED STATES, Appellee, v. JOEL RIVERA-ALEJANDRO, a/k/a "J", Defendant, Appellant.

Prior History: [**1] APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO. Hon. Carmen Consuelo Cerezo, U.S. District Judge.
United States v. Rivera-Alejandro, 2010 U.S. Dist. LEXIS 161230, 2010 WL 11706630 (D.P.R., June 2, 2010)

Core Terms

trial judge, juror, sentencing, conspiracy, marijuana, cross-examination, convictions, crack, witnesses, argues, interviews, drugs, drug quantity, codefendant, calculated, defendants', indictment, courtroom, rough, drug trafficking, bought, bias, quantities, impeachment, aiding and abetting, sales, seller, district court, woman, abuse of discretion

Case Summary

Overview

HOLDINGS: [1]-Defendants' Sixth Amendment speedy trial rights were not violated as the presumed prejudice from a five-year delay was counterbalanced by their contributions to the pretrial delays and the number of years they waited before asserting their rights. Thus, they had not shown how their ability to mount an adequate defense was hampered by the delay or how the trial judge abused her discretion; [2]-Motions to suppress evidence were properly denied where there was no objection to a magistrate judge's R & R as to a notebook, and a gun was seized as part of a lawful traffic stop for an unlawfully tined front window; [3]-The trial judge properly calculated the drug quantities attributable to each of them when determining their individual guidelines sentencing ranges given the testimony about the operational details and length of the drug trafficking organization.

Outcome

Convictions and sentences affirmed.

▼ LexisNexis® Headnotes

Constitutional Law > ... > Fundamental Rights ▼ > Criminal Process ▼ > Speedy Trial ▼
Criminal Law & Procedure > Preliminary Proceedings ▼ > Speedy Trial ▼ > Constitutional Right ▼
View more legal topics

HN1 **Criminal Process, Speedy Trial**
The right to a speedy and public trial is guaranteed to criminal defendants via the Sixth Amendment. (quoting U.S. Const. amend. VI). Therefore, criminal charges must be dismissed when the government violates this right. More like this Headnote

Shepardize® - Narrow by this Headnote

Constitutional Law > ... > Fundamental Rights ▼ > Criminal Process ▼ > Speedy Trial ▼
Criminal Law & Procedure > Appeals ▼ > Standards of Review ▼ > Abuse of Discretion ▼
View more legal topics

HN2 **Criminal Process, Speedy Trial**
The appellate court has consistently reviewed a district court's resolution of a defendant's motion to dismiss his indictment on the basis of a Sixth Amendment violation of his right to a speedy trial for abuse of discretion. When the appellate court evaluates such a challenge, it consider, primarily, four factors: (1) the length of delay; (2) the reason assigned by the government for the delay; (3) the defendant's responsibility to assert his right; and (4) prejudice to the defendant, particularly to limit the possibility that the defense will be impaired. However, none of the four factors is either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant. Further, case law says to presume delays of one year or more are prejudicial and to proceed with an analysis that balances all four of the factors to determine whether there has been a violation, as no one factor carries any talismanic power. Additionally, judicial precedent is clear that the inquiry into the four factors is completely dependent on the circumstances of each individual case. More like this Headnote

Shepardize® - Narrow by this Headnote

Constitutional Law > ... > Fundamental Rights ▼ > Criminal Process ▼ > Speedy Trial ▼
Criminal Law & Procedure > Preliminary Proceedings ▼ > Speedy Trial ▼ > Constitutional Right ▼
View more legal topics

HN3 **Criminal Process, Speedy Trial**
Judicial precedent clearly states that the Sixth Amendment's guarantee to a speedy trial does not apply to the sentencing phase of a criminal prosecution. Once a defendant has been found guilty at trial or has pleaded guilty to criminal charges, the guarantee doesn't apply. More like this Headnote

Shepardize® - Narrow by this Headnote

Constitutional Law > ... > Fundamental Rights ▼ > Criminal Process ▼ > Speedy Trial ▼
Criminal Law & Procedure > Preliminary Proceedings ▼ > Speedy Trial ▼ > Constitutional Right ▼

HN4 **Criminal Process, Speedy Trial**
For speedy trial purposes, the length of pretrial delay is calculated from either arrest or indictment, whichever occurs first. More like this Headnote

Shepardize® - Narrow by this Headnote

Constitutional Law > ... > Fundamental Rights ▼ > Criminal Process ▼ > Speedy Trial ▼
Criminal Law & Procedure > Preliminary Proceedings ▼ > Speedy Trial ▼ > Constitutional Right ▼

HN5 **Criminal Process, Speedy Trial**
The second factor of the speedy trial analysis, reasons for the delay, is the focal inquiry. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > Preliminary Proceedings > Speedy Trial > Statutory Right

HN6 Speedy Trial, Statutory Right
When it comes to the reasons for delays of a trial, different weights should be assigned to the different reasons the government points to as justification for the delays. More like this Headnote

Shepardize® - Narrow by this Headnote

Constitutional Law > ... > Fundamental Rights > Criminal Process > Speedy Trial
Criminal Law & Procedure > Preliminary Proceedings > Speedy Trial > Constitutional Right

HN7 Criminal Process, Speedy Trial
With respect to the fourth speedy trial factor, prejudice, case law recognizes three types of prejudice: oppressive pretrial incarceration, anxiety and concern of the accused, and the possibility that the accused's defense will be impaired by dimming memories and loss of exculpatory evidence. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > ... > Standards of Review > Plain Error > Definition of Plain Error

HN8 Plain Error, Definition of Plain Error
The plain-error standard requires an appellant to prove four things: (1) an error, (2) that is clear or obvious, (3) which affects his substantial rights, and which (4) seriously impugns the fairness, integrity, or public reputation of the proceeding. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > ... > Reviewability > Waiver > Triggers of Waivers

HN9 Waiver, Triggers of Waivers
Federal procedural rules and case law are crystal clear that when a party fails to file an objection to a magistrate judge's report and recommendation, the party has waived any review of the district court's decision. Fed. R. Crim. P. 59(a). More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > Preliminary Proceedings > Pretrial Motions & Procedures > Suppression of Evidence

HN10 Pretrial Motions & Procedures, Suppression of Evidence
When an appellate court reviews a challenge to a district court's denial of a motion to suppress, it is to view the facts in the light most favorable to the district court's ruling on the motion. The appellate court recites the key facts as found by the district court, consistent with the record support. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > ... > Standards of Review > Clearly Erroneous Review > Motions to Suppress
View more legal topics

HN11 Clearly Erroneous Review, Motions to Suppress
There are long-established standards for reviewing a district court's denial of a motion to suppress: the appellate court considers the motion anew, giving full deference to the district court's findings of fact (disturbing them only if the record reveals the findings were clearly wrong), and upholding the denial if any reasonable view of the record supports it. Stated slightly differently, under this rubric the appellate court can likewise affirm a denial on any basis apparent in the record. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > Appeals > Standards of Review > Abuse of Discretion
View more legal topics

HN12 **Standards of Review, Abuse of Discretion**
Generally, the district court has discretion as to whether it holds an evidentiary hearing when considering a motion to suppress evidence, so abuse of discretion informs appellate review of the trial court's denial of an evidentiary hearing. A defendant has no right to an evidentiary hearing unless he shows that material facts are in doubt or dispute, and that such facts cannot reliably be resolved on a paper record, most critically, he must show that there are factual disputes which, if resolved in his favor, would entitle him to the requested relief. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Investigative Stops

HN13 **Warrantless Searches, Investigative Stops**
There is no doubt that an officer can stop a car if he sees a driver commit a traffic offense, even if the stop is an excuse to investigate something else. The officer can then order those inside the vehicle to get out. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > ... > Discovery & Inspection > Brady Materials > Brady Claims
Evidence > ... > Examination > Cross-Examinations > Collateral Matters
View more legal topics

HN14 **Brady Materials, Brady Claims**
A trial judge's conclusion that information is not exculpatory under the Brady rule gets examined through an abuse-of-discretion lens. To make an effective Brady claim, the evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the government, either willfully or inadvertently; and prejudice must have ensued. The import of withholding evidence is heightened where the evidence is highly impeaching or when the witness' testimony is uncorroborated and essential to the conviction. Suppressed impeachment evidence is immaterial under the Brady rule, however, if the evidence is cumulative or impeaches on a collateral issue. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > Appeals > Standards of Review > Abuse of Discretion
View more legal topics

HN15 **Standards of Review, Abuse of Discretion**
Appellate review of the trial judge's Jencks Act determination is for abuse of discretion. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > Trials > Jencks Act > Definition of Statement
View more legal topics

HN16 **Jencks Act, Definition of Statement**
The Jencks Act, 18 U.S.C.S. § 3500, in concert with Fed. R. Crim. P. 26.2, controls the production of certain witness statements in the government's possession. To be discoverable under the Jencks Act, a government record of a witness interview must be substantially a verbatim account. In addition, the account must have been signed or otherwise verified by the witness himself. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > Trials > Jencks Act > Definition of Statement
View more legal topics

HN17 **Jencks Act, Definition of Statement**
In the context of a claim under the Jencks Act, a statement is defined in 18 U.S.C.S. § 3500(e)(1) in part as a written statement made by said witness and signed or otherwise adopted or approved by him. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > Trials > Jencks Act > Definition of Statement
View more legal topics

HN18 Jencks Act, Definition of Statement
Where a defendant requests discovery of potential Jencks material, judicial precedent requires the district judge to conduct an independent investigation of any such materials and determine whether these materials are discoverable under the Jencks Act. This independent review may include such measures as in camera inspection of any disputed document(s), and conducting a hearing to evaluate extrinsic evidence, including taking the testimony of the witness whose potential statements are at issue as well as the person who prepared the written document in which those statements appear. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > ... > Standards of Review > Abuse of Discretion > Evidence
Evidence > ... > Procedural Matters > Objections & Offers of Proof > Objections
View more legal topics

HN19 Abuse of Discretion, Evidence
An appellate court reviews preserved objections to evidentiary rulings, including whether to admit evidence over a hearsay objection, for abuse of discretion. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > Appeals > Reversible Error > Evidence
View more legal topics

HN20 Reversible Error, Evidence
Improperly admitted evidence is harmless if it is highly probable that the error did not influence the verdict. (error may be considered harmless when the record minus the improperly admitted evidence gives us fair assurance that the jurors' judgment was not substantially swayed by the error. The harmlessness inquiry requires a case-specific examination of factors that include the centrality of the tainted material, its prejudicial impact, and any other indications that the error affected the factfinder's resolution of a material issue. More like this Headnote

Shepardize® - Narrow by this Headnote

Constitutional Law > ... > Fundamental Rights > Criminal Process > Right to Confrontation
Criminal Law & Procedure > Appeals > Standards of Review > Abuse of Discretion
Evidence > ... > Credibility of Witnesses > Impeachment > Bias, Motive & Prejudice
View more legal topics

HN21 Criminal Process, Right to Confrontation
The Confrontation Clause of the Sixth Amendment guarantees criminal defendants the right to cross-examine witnesses who testify against them, so defendants can test the believability of a witness and the truth of his testimony. This right is not without limits, however; the district court wields considerable discretion to impose reasonable limits' on cross-examination. When a witness's credibility is at issue, the trial court may limit cross-examination as long as the court allows sufficient leeway to establish a reasonably complete picture of the witness' veracity, bias, and motivation. We review de novo whether a defendant was afforded a reasonable opportunity to impeach a witness, and for abuse of discretion limitations the trial court imposed on that opportunity. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > ... > Reviewability > Preservation for Review > Requirements

HN22 Preservation for Review, Requirements
An appellate court deems waived claims not made or claims adverted to in a cursory fashion, unaccompanied by developed argument. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > Trials > Examination of Witnesses > Cross-Examination

Evidence > ... > Examination > Cross-Examinations > Scope
View more legal topics

HN23 **Examination of Witnesses, Cross-Examination**
The district court wields considerable discretion to impose reasonable limits' on cross-examination. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > Trials > Witnesses > Impeachment
Evidence > ... > Examination > Cross-Examinations > Collateral Matters
View more legal topics

HN24 **Witnesses, Impeachment**
A matter is collateral if the matter itself is not relevant in the litigation to establish a fact of consequence, i.e., not relevant for a purpose other than mere contradiction of the in-court testimony of the witness. In general, a party may not present extrinsic evidence for the sole purpose of impeaching a witness on a collateral matter. The decision on whether a matter is collateral or material is within the district court's discretion. More like this Headnote

Shepardize® - Narrow by this Headnote

Evidence > Relevance > Exclusion of Relevant Evidence > Confusion, Prejudice & Waste of Time
View more legal topics

HN25 **Exclusion of Relevant Evidence, Confusion, Prejudice & Waste of Time**
Fed. R. Evid. 403 says the court may exclude relevant evidence if its probative value is substantially outweighed by a danger of among other reasons needlessly presenting cumulative evidence. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > Appeals > Standards of Review > Abuse of Discretion
Evidence > Relevance > Exclusion of Relevant Evidence > Confusion, Prejudice & Waste of Time
View more legal topics

HN26 **Standards of Review, Abuse of Discretion**
Evidence is cumulative if repetitive, and if the small increment of probability it adds may not warrant the time spent in introducing it. Fed. R. Evid. 403 allows a trial judge to exclude relevant evidence if its probative value is substantially outweighed by a danger of certain pitfalls, including needlessly presenting cumulative evidence. Abuse of discretion guides appellate review of the district court's Rule 403 determination. An abuse of discretion showing is not an easy one to make. The appellate court affords deference to the district court's weighing of probative value versus unfair effect, only in extraordinarily compelling circumstances' reversing that on-the-spot judgment from the vista of a cold appellate record. In doing so, the appellate court acknowledges the trial judge's better position to assess the admissibility of the evidence in the context of the particular case before it. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > Trials > Judicial Discretion
Evidence > Relevance > Exclusion of Relevant Evidence > Confusion, Prejudice & Waste of Time

HN27 **Trials, Judicial Discretion**
There is no debate that the trial judge has considerable latitude in Fed. R. Evid. 403 rulings. Case law has previously upheld a district court's decision to exclude cumulative evidence on Rule 403 grounds as an appropriate discretionary call. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > Juries & Jurors > Disqualification & Removal of Jurors > Abuse of Discretion
View more legal topics

HN28 **Disqualification & Removal of Jurors, Abuse of Discretion**
All would agree that an impartial jury is an integral component of a fair trial and must be jealously safeguarded.

That said, a district court has broad, though not unlimited, discretion to determine the extent and nature of its inquiry into allegations of juror bias. The appellate court reviews the trial judge's approach and resolution to allegations of jury bias for abuse of discretion. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > Juries & Jurors > Disqualification & Removal of Jurors > Abuse of Discretion
View more legal topics

HN29 **Disqualification & Removal of Jurors, Abuse of Discretion**
Defendants seeking to establish juror misconduct bear an initial burden only of coming forward with a colorable or plausible claim. Once defendants have met this burden, an unflagging duty falls to the district court to investigate the claim. The type of investigation the district court chooses to conduct is within the district court's discretion; it may hold a formal evidentiary hearing, but depending on the circumstances, such a hearing may not be required. The court's primary obligation is to fashion a responsible procedure for ascertaining whether misconduct actually occurred and if so, whether it was prejudicial. So long as the district judge erects, and employs, a suitable framework for investigating the allegation and gauging its effects, and thereafter spells out her findings with adequate specificity to permit informed appellate review, the court's determination deserves great respect and should not be disturbed in the absence of a patent abuse of discretion. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > ... > Reviewability > Waiver > Triggers of Waivers

HN30 **Waiver, Triggers of Waivers**
Adoption by reference can be a risky move because it is well-known that it cannot occur in a vacuum and the arguments must actually be transferable from the proponent's to the adopter's case. A statement of intention to join another's argument without providing any independent argument about the issue whatsoever will often result in waiver. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > Appeals > Standards of Review > Abuse of Discretion
View more legal topics

HN31 **Standards of Review, Abuse of Discretion**
The denial of a motion for mistrial is reviewed for abuse of discretion. Conducting an inquiry into a colorable question of jury taint is a delicate matter, and there is no pat procedure for such an inquiry. The trial court has wide discretion to fashion an appropriate procedure for assessing whether the jury has been exposed to substantively damaging information, and if so, whether cognizable prejudice is an inevitable and ineradicable concomitant of that exposure. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > Trials > Prison Attire & Restraints

HN32 **Trials, Prison Attire & Restraints**
To be sure, care should be taken whenever reasonably possible to prevent the jurors from viewing a defendant handcuffed while the defendant is on trial. In the absence of a showing of prejudice, however, a fleeting glance by jurors of a defendant outside the courtroom in handcuffs does not justify a new trial. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > Trials > Motions for Mistrial

HN33 **Trials, Motions for Mistrial**
Mere awareness that one or more defendants were detained during the trial is not sufficiently prejudicial to require a mistrial. A brief and fleeting comment on the defendant's incarceration during trial, without more, does not impair the presumption of innocence to such an extent that a mistrial is required. More like this Headnote

Shepardize® - Narrow by this Headnote

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > Scope of Protection
Criminal Law & Procedure > Trials > Defendant's Rights > Right to Fair Trial
Evidence > ... > Judicial Intervention in Trials > Comments by Judges > Limitations

HN34 Procedural Due Process, Scope of Protection
When addressing allegations of judicial bias, the appellate court considers whether the comments were improper and, if so, whether the complaining party can show serious prejudice. The appellate court considers isolated incidents in light of the entire transcript so as to guard against magnification on appeal of instances which were of little importance in their setting. Clearly a trial judge should be fair and impartial in her comments during a jury trial because a fair trial in a fair tribunal is a basic requirement of due process. However, a finding of partiality should be reached only from an abiding impression left from a reading of the entire record. And even an imperfect trial is not necessarily an unfair trial. More like this Headnote

Shepardize® - Narrow by this Headnote

Legal Ethics > Judicial Conduct

HN35 Legal Ethics, Judicial Conduct
As a general rule, a judge's mid-trial remarks critical of counsel are insufficient to sustain a claim of judicial bias or partiality against the client. More like this Headnote

Shepardize® - Narrow by this Headnote

Legal Ethics > Judicial Conduct

HN36 Legal Ethics, Judicial Conduct
Statements that are made by a judge in the jury's presence are subjected to stricter scrutiny when considering a claim of judicial bias. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > Trials > Jury Instructions > Cautionary Instructions

HN37 Jury Instructions, Cautionary Instructions
In assessing the impact of a judge's actions, jury instructions can be a means of allaying potential prejudice. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > Trials > Jury Instructions > Curative Instructions
View more legal topics

HN38 Jury Instructions, Curative Instructions
An appellate court reviews preserved claims of prosecutor misconduct de novo and unpreserved claims for plain error. Either way, the appellate court may first consider whether the government's conduct was, in fact, improper. If so, it will only reverse if the misconduct so poisoned the well that the trial's outcome was likely affected. Four factors guide the appellate analysis: (1) the severity of the prosecutor's misconduct, including whether it was deliberate or accidental; (2) the context in which the misconduct occurred; (3) whether the judge gave curative instructions and the likely effect of such instructions; and (4) the strength of the evidence against the defendant. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > Appeals > Standards of Review > Abuse of Discretion
View more legal topics

HN39 Standards of Review, Abuse of Discretion
When an appellate court is presented with a cumulative error argument, it reviews the rulings for abuse of discretion before deciding what cumulative effect any errors may have had. In doing so, the appellate court must consider each such claim against the background of the case as a whole, paying particular weight to factors such as

the nature and number of the errors committed; their interrelationship, if any; and the strength of the government's case. More like this Headnote

Shepardize® - Narrow by this Headnote

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > Double Jeopardy
Criminal Law & Procedure > ... > Double Jeopardy > Double Jeopardy Protection > Acquittals
View more legal topics

HN40 Procedural Due Process, Double Jeopardy
When the defendants make the same arguments before the district court (therefore preserving the legal issue for appellate review), the appellate court's task is to consider afresh their arguments about why they say they are entitled to judgments of acquittal. That is, the appellate court gives no deference to the district court's assessment of the same arguments when it evaluated the defendants' motions for judgments of acquittal. To complete its review, the appellate court considers all the evidence, direct and circumstantial, in the light most favorable to the prosecution, draws all reasonable inferences consistent with the verdict, and avoids credibility judgments, to determine whether a rational jury could have found the defendants guilty beyond a reasonable doubt. If the appellate court agrees with the defendants that the trial judge erred when she denied their motions for judgments of acquittal, then the appellate court must order acquittal. The Double Jeopardy Clause precludes a second trial once the reviewing court has found the evidence legally insufficient. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > ... > Inchoate Crimes > Conspiracy > Elements
Evidence > Types of Evidence > Circumstantial Evidence
View more legal topics

HN41 Conspiracy, Elements
To convict someone of drug-conspiracy, the government must prove beyond a reasonable doubt that he knew about and voluntarily participated in the conspiracy, intending to commit the underlying substantive offense. Proof may come from direct evidence or circumstantial evidence, like inferences drawn from members' words and actions and from the interdependence of activities and persons involved. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > Accessories > Aiding & Abetting

HN42 Accessories, Aiding & Abetting
To convict a defendant of aiding and abetting in the distribution of marijuana, the government needs to prove she associated herself with the venture, participated in the venture as something that she wished to bring about, and that she sought by her actions to make the venture succeed. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > Trials > Witnesses > Credibility

HN43 Witnesses, Credibility
A defendant cannot win a sufficiency-of-the-evidence challenge by claiming the witnesses against him were not credible. The appellate framework for reviewing this kind of challenge means the appellate court gives the government the benefit of the doubt and resolve any questions of witness credibility against the defendant. More like this Headnote

Shepardize® - Narrow by this Headnote

Evidence > Weight & Sufficiency

HN44 Evidence, Weight & Sufficiency
It is well-settled that testimony from even just one witness can support a conviction. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > ... > Appeals > Standards of Review > Abuse of Discretion
View more legal topics

HN45 Standards of Review, Abuse of Discretion
The appellate court's overall task when it examines a sentence or the sentencing process is to consider whether the sentence is reasonable. Typically, the reasonableness review is bifurcated, requiring the appellate court to ensure that the sentence is both procedurally and substantively reasonable. The appellate court ordinarily reviews both procedural and substantive reasonableness arguments under a deferential abuse-of-discretion standard. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > ... > Appeals > Standards of Review > Abuse of Discretion
View more legal topics

HN46 Standards of Review, Abuse of Discretion
When assessing procedural reasonableness, the appellate court engages in a multifaceted abuse-of-discretion standard whereby it affords de novo review to the sentencing court's interpretation and application of the sentencing guidelines, examines the court's factfinding for clear error, and evaluates its judgment calls for abuse of discretion. And the appellate court will find an abuse of discretion only when left with a definite conviction that no reasonable person could agree with the judge's decision. One of the ways in which a district court can commit a procedural error in sentencing is to improperly calculate the guidelines sentencing range. More like this Headnote

Shepardize® - Narrow by this Headnote

Evidence > Burdens of Proof > Preponderance of Evidence

HN47 Burdens of Proof, Preponderance of Evidence
When making a drug quantity finding, the sentencing court's responsibility is to make reasonable estimates of drug quantities, provided they are supported by a preponderance of the evidence. The appellate court reviews those estimates deferentially, reversing only for clear error. The appellate court will only find clear error when its review of the whole record forms a strong, unyielding belief that a mistake has been made. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > ... > Controlled Substances > Delivery, Distribution & Sale > Conspiracy
View more legal topics

HN48 Delivery, Distribution & Sale, Conspiracy
A defendant who is convicted of conspiracy to distribute controlled substances will be held responsible not only for the drugs he actually handled but also for the full amount of drugs that he could reasonably have anticipated would be within the ambit of the conspiracy. Although the court may rely on reasonable estimates and averages to reach its drug-quantity determinations, those estimates must possess adequate indicia of reliability and demonstrate record support, a hunch or intuition won't cut it, When the appellate court reviews the district court's factual finding as to drug quantity for clear error, it is looking for whether the government presented sufficient reliable information to permit the court reasonably to conclude that the appellants were responsible for a quantity of drugs at least equal to the quantity threshold for the assigned base offense level. An estimate of drug quantity may be unreliable if based on an extrapolation from too small a sample. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > ... > Appeals > Standards of Review > Abuse of Discretion
View more legal topics

HN49 Standards of Review, Abuse of Discretion
An appellate court reviews preserved sentencing arguments for abuse of discretion, reviewing the findings of fact for clear error and any conclusion regarding the governing sentencing laws de novo. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > Sentencing > Imposition of Sentence > Factors

View more legal topics

HN50 **Imposition of Sentence, Factors**

When a district court determines drug quantity for the purpose of sentencing a defendant convicted of participating in a drug trafficking conspiracy, the court is required to make an individualized finding as to drug amounts attributable to, or foreseeable by, that defendant. But this is not the same thing as requiring that the defendant must have personally handled the drugs for which he is held responsible, which courts don't. A defendant may be held responsible for drugs involved in his 'relevant conduct and such conduct may include a defendant's own acts or the acts of others. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > ... > Delivery, Distribution & Sale > Conspiracy > Elements
View more legal topics

HN51 **Conspiracy, Elements**

in a drug conspiracy, the quantities of drugs sold by others operating within the enterprise are attributable to a defendant as long as the sales were a reasonably foreseeable consequence of the enterprise. A defendant may be held responsible only for drug quantities foreseeable to that individual. Foreseeability encompasses not only the drugs the defendant actually handled but also the full amount of drugs that he could reasonably have anticipated would be within the ambit of the conspiracy. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > Sentencing > Imposition of Sentence > Findings
Evidence > Burdens of Proof > Preponderance of Evidence

HN52 **Imposition of Sentence, Findings**

For sentencing purposes, the district court's finding as to the amount of drugs reasonably foreseeable to a defendant need only be supported by a preponderance of the evidence and need not be exact so long as the approximation represents a reasoned estimate. In addition, the appellate court will set aside a drug-quantity calculation only if clearly erroneous; if there are two reasonable views of the record, the district court's choice between the two cannot be considered clearly erroneous. More like this Headnote

Shepardize® - Narrow by this Headnote

Criminal Law & Procedure > Accessories > Aiding & Abetting

HN53 **Accessories, Aiding & Abetting**

Mere association between the principal and those accused of aiding and abetting is not sufficient to establish guilt; nor is mere presence at the scene and knowledge that a crime was to be committed sufficient to establish aiding and abetting. More like this Headnote

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Criminal Law & Procedure > ... > Controlled Substances > Substance Schedules > Cocaine
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HN54 **Substance Schedules, Cocaine**

As part of the trial court's wide discretion in sentencing, judicial precedent acknowledges the district courts' authority to vary from the crack cocaine United States Sentencing Guidelines based on policy disagreement with them, and not simply based on an individualized determination that they yield an excessive sentence in a particular case. More like this Headnote

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Judges: Before Lynch ▾, Thompson ▾, and Kayatta ▾, Circuit Judges.

Opinion by: THOMPSON ▾

Opinion

[*13] THOMPSON ▾, Circuit Judge.

OVERVIEW

These appeals arise from the drug conspiracy and distribution convictions of five members of a vast drug trafficking organization. Operating primarily out of the Los Claveles Housing Project ("Los Claveles") and the general Villa Margarita Ward area within the Municipality of Trujillo Alto, Puerto Rico, fifty-five individuals were indicted on charges [**2] of conspiracy to distribute heroin, cocaine, cocaine base (aka crack), marijuana, and prescription pills between May 2006 and May 2009. The indictment tagged each of the defendants before us with at least one role in the conspiracy; hierarchical designations ranging from leader, supervisor, drug owner, enforcer, runner, seller, or facilitator. Subsets of the fifty-five were charged with "aiding and abetting in the distribution of" one or more of heroin, cocaine base, cocaine, or marijuana. Some were also charged with conspiracy "to possess firearms in furtherance of drug trafficking crimes."

By the time a jury trial started in the summer of 2014 -- more than five years after the 2009 indictment (which certainly raises our eyebrows) -- most of the defendants had pled guilty. Four of them testified as cooperating witnesses ("CWs") for the government. At the end of the trial in December 2015 only eight defendants remained. The jury convicted seven defendants of some or all of the charges against them and the trial judge dismissed the charges against the eighth defendant.

Five of these defendants -- Joel Rivera-Alejandro, Carlos Rivera-Alejandro, Juan **[*14]** Rivera-George, Suanette Ramos-Gonzalez, and Idalia Maldonado-Peña [**3] -- have appealed their convictions (and some their sentences) and we briefly introduce them to you.

- Joel [1] was charged as one of the two leaders of the conspiracy as well as an enforcer. He was convicted of two conspiracy charges and all substantive drug charges, and sentenced to 360 months' imprisonment, concurrent.
- Carlos (Joel's brother) was identified as a supervisor, drug owner, seller, and enforcer. He was convicted on all counts against him and sentenced to 324 months' imprisonment, concurrent.
- Juan was tagged as a runner for the conspiracy, convicted on all counts, and sentenced to 235 months' imprisonment, concurrent.
- Suanette was charged for her roles as a seller and a facilitator and convicted of the drug conspiracy charge as well as the substantive marijuana distribution charge. Suanette was sentenced to 24 months' imprisonment, concurrent.
- Idalia (Carlos's wife) was identified in the indictment as a seller and convicted on the cocaine base distribution charge. Idalia was sentenced to 60 months' imprisonment.

The five defendants in these consolidated appeals raise a variety of challenges. In our review of their claims, we will start by addressing the speedy trial contentions [**4] before turning to other purported trial errors. We'll provide the background information necessary to place the issues and arguments in context as we proceed. [2] For those readers for whom what follows will be tl;dr, [3] the short version is that none of the issues raised by these five defendants translate into reversible error warranting vacatur of their convictions or sentences. Thus, we affirm the whole kit and caboodle.

SPEEDY TRIAL

The defendants waited five years for trial

(Joel & Carlos)

HN1 "[T]he right to a speedy and public trial" is guaranteed to criminal defendants **[*15]** via the Sixth Amendment. United States v. Lara, 970 F.3d 68, 80 (1st Cir. 2020) (quoting U.S. Const. amend. VI). Therefore, criminal charges must be dismissed when the government violates this right. Id. (quoting United States v. Dowdell, 595 F.3d 50, 60 (1st Cir. 2010)). Joel and Carlos claim that their constitutional right to a speedy trial was violated because, after they were arrested and arraigned in mid-2009, the trial (which took 128 days to complete) didn't start until five years later. 4

Below, the defendants voiced speedy trial complaints during the pretrial period. In April 2013, Joel filed a motion to dismiss his indictment alleging his constitutional right to a speedy trial had been violated. Carlos joined the motion. The magistrate judge to [**5] whom the motion was referred issued a Report and Recommendation ("R&R") in July 2013. The magistrate judge found the trial date had either been vacated or rescheduled eight times and attributed much of the delay to change of plea motions filed by forty of Joel's codefendants. He also cited the numerous pretrial motions Joel filed requesting new counsel which resulted in continuation motions so that each new counsel (three in all) could get up to speed. The magistrate judge also determined Joel had not shown prejudice from the delay and recommended the district court deny the motion to dismiss.

Joel objected to the R&R (and Carlos adopted that objection), focusing on the failure of the R&R to discuss the numerous pretrial motions the government had filed up to that point which had contributed to the delay of the trial's start date. According to Joel, in the four years between his indictment and his speedy trial motion to dismiss, he had filed 4 continuation motions whereas the government had filed 22 motions to either continue the trial date or extend the time to respond to a pending motion. Joel further argued the length of the delay was presumptively prejudicial as per our case law [**6] and the magistrate judge should not have required him to show the ways in which he'd been prejudiced. Responding to the objection, the trial judge entered a one-paragraph order agreeing with the R&R and concluding there had been no speedy trial violation.

On appeal, Joel and Carlos reprise their complaints. 5 ***HN2*** We have consistently reviewed a district court's resolution of a defendant's motion to dismiss his indictment on the basis of a Sixth Amendment violation of his right to a speedy trial for abuse of discretion. 6 Lara, 970 F.3d at **[*16]** 80. When we evaluate such a challenge, we consider, primarily, four factors as set forth in Barker v. Wingo, 407 U.S. 514, 530-32, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972): " (1) 'the length of delay'; (2) 'the reason assigned by the government for the delay'; (3) 'the defendant's responsibility to assert his right'; and (4) 'prejudice to the defendant, particularly to limit the possibility that the defense will be impaired.'" Lara, 970 F.3d at 80 (quoting United States v. Handa, 892 F.3d 95, 101 (1st Cir. 2018)). However, "none of the four factors" is "either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant." Barker, 407 U.S. at 533. Further, our case law tells us to presume delays of one year or more are [**7] prejudicial and to proceed with an analysis that "balance[s] all four of the factors to determine whether there has been a violation, as [no one factor] carries 'any talismanic power.'" Lara, 970 F.3d at 81 (quoting Dowdell, 595 F.3d at 60). 7 Additionally, the Supreme Court has been clear that the inquiry into the four factors is completely dependent on the circumstances of each individual case. See Barker, 407 U.S. at 530-31. Joel and Carlos argue all four Barker factors weigh in their favor. We turn now to examine them.

Everyone agrees that the first factor -- length of delay -- weighs in Joel's and Carlos's favor. There is no doubt that the time between the defendants' May 2009 indictments and the July 28, 2014 trial start date was more than one year. 8

HN5 The second factor -- reasons for the delay -- is the "focal inquiry." Lara, 970 F.3d at 82 (quoting United States v. Souza, 749 F.3d 74, 82 (1st Cir. 2014)). Joel, joined by Carlos, and the government are quick to point fingers at each other. Both defendants argue the root of the delay was the government's decision to indict and prosecute fifty-five defendants at the same time, exacerbated by the government's many motions to continue the trial date. According to Joel and Carlos, the delay was made more egregious by the trial judge's decision to wait to begin the trial [**8] until all the other defendants seeking to change their plea had done so, as well as the length of time she took to resolve pretrial motions such as Joel's motions to suppress. In particular, Carlos points out that defendants shouldn't have to choose between filing pretrial motions and getting to trial faster. The government argues the defendants principally caused the delays because of their numerous pretrial motions -- specifically, that the four defendants who bring speedy-trial claims (Joel, Carlos, Suanette, and Juan) filed ninety-nine pretrial motions -- and further say Joel's repeated change of counsel contributed to the delay.

HN6 When it comes to the reasons for delays, "different weights should be assigned to [the] different reasons" the government points to as justification for the delays. Barker, 407 U.S. at 531. **[*17]** In Lara, we held this factor weighed against the defendants there because their pretrial motions and those of other codefendants were the primary reason for the delays, not government foot-dragging. 970 F.3d at 82. In United States v. Casas, we noted the government had a legitimate reason for the five-and-a-half-year delay between the return of the indictment and the arraignment: the government's inability [**9] to find the defendant. 356 F.3d 104, 112-13 (1st Cir. 2004). Here, unlike these prior cases, the five-year wait for trial was clearly caused by the numerous motions of all stripes filed by both the government and the defendants, including motions to suppress, discovery-related motions, change of plea motions, motions to continue the trial date, etc. Also contributing to the delay was the court's need on several occasions to continue the proceedings to attend to change-of-plea hearings from the other forty-seven indicted conspiracy members. Accordingly, it is difficult to draw a line and attribute trial delay to either the government or the defendants because they both substantially contributed to it.

Joel pushes back and insists that this mega-prosecution is the root cause of the impermissible, inordinate delay that transpired here and this court, he urges, should not countenance it. However, in considering a speedy trial challenge involving the prosecution of ten drug trafficking conspirators, this court deemed the joint proceeding an "efficient administration of justice," even when the time from arrest to trial took over three years. United States v. Casas, 425 F.3d 23, 33, 34 (1st Cir. 2005). Nonetheless, Joel argues the joint prosecution of fifty persons here certainly did [**10] not lead to efficiency as he waited more than five years to reach the first day of trial. As reasonably viewed, the efficient administration of justice is at least questionable in this case and the delay causes us much concern. But given our conclusion that both sides contributed to the delay, we have no reason to reconsider Casas' efficiency rationale. So on we go.

Moving to the third factor -- when and how Joel and Carlos asserted their rights to a speedy trial -- we note they did file an unsuccessful motion to dismiss on this basis, albeit almost four years post-arraignment. Subsequently, Joel filed two notices asserting his right to a speedy trial -- one in December 2013 and another in May 2014 -- asking the district court to simply note that he was asserting his right but not requesting a responsive pleading from the government. In May 2015, after trial had been underway for ten months, Carlos claimed a speedy trial violation because he had already been detained for 72 months. This assertion came after codefendant Suanette sought an eight-week trial break due to pregnancy-related complications. In our view, in considering Joel's and Carlos's efforts to assert their speedy trial [**11] rights, while we cannot say they completely sat on their rights, their efforts were, at best, rather anemic. Barker, 407 U.S. at 531-32 ("Whether and how a defendant asserts his right . . . [and] [t]he strength of his efforts" reflects the degree of prejudice to defendants.).

HN7 With respect to the fourth factor -- prejudice -- we have previously "recognized three types of prejudice: 'oppressive pretrial incarceration, anxiety and concern of the accused, and the possibility that the accused's defense will be impaired by dimming memories and loss of exculpatory evidence.'" Lara, 970 F.3d at 82-83 (brackets omitted) (quoting Doggett v. United States, 505 U.S. 647, 654, 112 S. Ct. 2686, 120 L. Ed. 2d 520 (1992)). Out of the gate, the government says that neither defendant explains how his defense was impaired -- i.e., prejudiced -- by the length of the delay. Nevertheless, Carlos argues this court has never confronted a delay of this **[*18]** length and given the presumption of prejudice beyond a one-year delay, our analysis should begin and end there.

Beyond the extraordinary delay, Joel claims prejudice, first citing the heightened and prolonged anxiety he experienced because he thought the government was retaliating against him for being acquitted in a Commonwealth death-penalty homicide trial. Second, that the "oppressive conditions [**12] of confinement while [he] was incarcerated" likewise need to factor into the prejudice analysis. 9

Joel points to United States v. Black, 918 F.3d 243, 264-65 (2d Cir. 2019), in support of his claim of prejudice. While Black has the result Joel is looking for -- a dismissal due to speedy trial infractions of constitutional proportions -- the reason for the sixty-eight-month delay between indictment and trial in that case was attributed almost entirely to the government. For years it was unable to settle on the charges and it repeatedly flip-flopped on whether it was going to pursue the death penalty. Id. at 248 (government ultimately filed a superseding indictment with new charges almost three years after the indictment was filed, then announced it would not seek the death penalty). The defendants in Black also "repeatedly requested a speedy trial." Id. at 249. The anxiety to the defendants in Black caused by the uncertainty over whether they would face the death penalty in the case for which they stood trial was of a substantively different nature than the anxiety caused to Joel and his codefendants from their long wait to be tried for drug trafficking conspiracy.

While we clearly have grave concerns about the government's approach in this case which resulted in [**13] a protracted delay to verdict, we conclude the trial judge did not abuse her discretion in denying Joel's motion, joined by Carlos, to dismiss the indictment for violation of the Sixth Amendment's speedy trial guarantee. Balancing all four Barker factors, the presumed prejudice from the length of the delay is counterbalanced by Joel's and Carlos's contributions to the pretrial delays as well as the number of years they waited before asserting their speedy trial rights. See Lara, 970

F.3d at 80. As such, Joel and Carlos have not shown how their ability to mount an adequate defense was hampered by the delay or how the trial judge abused her discretion by failing to so find.

That said, delaying the trial for those defendants who chose to exercise their constitutional right to have the government prove their guilt beyond a reasonable doubt while most of the rest of the codefendants changed their pleas certainly raises genuine concerns about the impact of the government's decision to charge and monolithically process "mega-cases" on defendants' rights to a speedy trial. This five-year gap between the indictment and the start of trial does not sit well with us. Some of the defendants spent this entire pretrial period detained [**14] while still presumed innocent. When speedy trial rights claims are raised, drawing a line and knowing when it has been crossed is circumstance-dependent, but the defendants' five-year wait for trial was as close as it comes to infringement. Despite their individual contributions to some of the delay, each defendant was forced to wait while forty-seven codefendants changed their pleas, changed their counsel, new counsel got up to speed on the case, and the judge processed and decided motions unrelated **[*19]** to them. Even though the defendants made no showing of how their defenses were actually impacted by the delay, at the very least witnesses' memories would have dulled and faded over that time.

There is no perfect solution to efficiently prosecuting alleged large drug distribution conspiracy cases, but the government needs to better balance the efficiencies it enjoys by prosecuting these so-called "mega cases" with the defendants' rights to a speedy trial by considering ways to break those indicted into groups which can reach the first day of trial (when the defendants choose to exercise this right) sooner. Additionally and importantly, we note that the government's speedy trial argument [**15] as presented in its briefing makes clear that the government's reading of Casas is simply incorrect. We did not give our blessing there to multidefendant indictments regardless of the consequences, nor did we bless years of delay caused by allowing the time for codefendants' change of pleas to make it easier for the government to use codefendant testimony. When the government indicts, it should have enough evidence to prove the case as to each and every defendant without delays such as occurred here. When the government brings such large multidefendant criminal prosecutions, it assumes a considerable risk of violating the constitutional rights of defendants. It also risks losing convictions on appeal because of its choices, which are not necessary choices, to proceed with a sizable number of defendants (and/or overcharging).

And one final speedy trial coda before moving on: it would be wise for the district court to better strategize how to move such multi-party cases through the judicial system given the constitutional (and statutory) implications attendant thereto. When the Department of Justice presents the district court with these very difficult-to-manage scenarios, the court has [**16] management tools available to it to see that the cases are handled more expeditiously. Such tools are known to the district courts and it may well be there can be agreements as to procedures likely to secure more expeditious handling. Given these clear words of caution, we would not expect to see such unprecedented procedural prosecutions in the future.

The trial lasted 18 months

(Carlos)

After the trial started in July 2014, approximately 128 trial days were spread out over eighteen months, with the jury rendering its verdict in January 2016. The trial judge completed sentencing in May 2018. Carlos contends this "excessive trial length" was a violation of his Fifth Amendment right to due process. He argues he was prejudiced by the length of the trial, once it finally began, because during deliberations the jurors had to recall and process testimony they had heard over the course of the prior year-and-a-half. Our search of the record suggests this is the first time Carlos is asserting such a due process infringement and Carlos directs us to nothing to the contrary.[10]

[*20] ***HN8*** Because Carlos pivots to a due process argument on appeal, plain-error review applies -- "a standard that requires him to prove four things: [**17] (1) an error, (2) that is clear or obvious, (3) which affects his substantial rights . . ., and which (4) seriously impugns the fairness, integrity, or public reputation of the proceeding." United States v. Correa-Osorio, 784 F.3d 11, 17-18 (1st Cir. 2015).

Carlos presents a novel Fifth Amendment argument asking us to adopt and apply a modified four-factor speedy trial analytical framework to his due process claim. But he points to no case -- binding or otherwise -- in which we or the Supreme Court have done so. Consequently, there cannot be any clear or obvious legal error on the part of the trial judge.[11] See United States v. McCullock, 991 F.3d 313, 322 (1st Cir. 2021) (an error is clear or obvious when a trial judge disregards controlling precedent). Therefore, Carlos's argument on this point stumbles at the threshold.

MOTIONS TO SUPPRESS

In this section, we examine Juan's and Joel's arguments that the trial judge erred in denying two motions to suppress.

The notebook from Juan's apartment

(Juan)

Police found a notebook full of names and phone numbers in Juan's apartment during a warrantless search. According to Juan, this notebook, admitted into evidence at trial, should have been suppressed as obtained in violation of his Fourth Amendment rights because the Drug Enforcement Administration ("DEA") agent who seized the notebook did so when Juan [**18] was not home and without obtaining voluntary consent from his wife prior to the search. As we explain below, Juan waived this argument, so we decline to reach the merits.

After Juan filed a motion to suppress the notebook, a magistrate judge listened to testimony from one of the DEA agents and Juan's wife, and he ultimately recommended the district court deny the motion after concluding the government had adequately shown Juan's wife did voluntarily consent to the search. The magistrate judge's R&R had the usual warning: the parties had 14 days to file any objections to it and failure to object within that timeframe waived the right to appeal the order. Juan filed no objection and the trial judge approved and adopted the R&R.

HN9 Our procedural rules and case law are crystal clear that when, as here, a party fails to file an objection to an R&R, the party has waived any review of the district court's decision. United States v. Díaz-Rosado, 857 F.3d 89, 94 (1st Cir. 2017); Fed. R. Crim. P. 59(a); see also Garayalde-Rijos v. Mun. of Carolina, 747 F.3d 15, 21-22 **[*21]** (1st Cir. 2014) (noting the party had notice that the failure to object would result in waiver of further review of the decision); Davet v. Maccarone, 973 F.2d 22, 31 (1st Cir. 1992). We move on to the preserved suppression issue Joel raises.

The gun from Joel's father's car

(Joel)

Before trial, Joel sought suppression of a gun seized from [**19] the car he was driving when a law enforcement agent pulled him over outside his home. On appeal, Joel challenges the trial judge's denial of that motion.

HN10 "[W]hen we review a challenge to a district court's denial of a motion to suppress, we are to 'view the facts in the light most favorable to the district court's ruling' on the motion." United States v. Rodríguez-Pacheco, 948 F.3d 1, 3 (1st Cir. 2020) (quoting United States v. Camacho, 661 F.3d 718, 723 (1st Cir. 2011)). "[W]e recite the key facts as found by the district court, consistent with the record support." Id. (quoting United States v. Young, 835 F.3d 13, 15 (1st Cir. 2016)).

On February 26, 2009, agents from an investigative group called the Carolina Strike Force ("CSF") set up surveillance of the Los Claveles Public Housing Project in Trujillo Alto after receiving a tip from a reliable informant that the leaders of the drug trafficking organization under investigation met there on Thursdays to pick up money from the previous week's drug sales. The agents watched Joel drive into the housing complex in his father's car and leave in it, heading in the direction of his house in Villa Margarita. Officer Agustin Ortiz saw the car's windows were likely tinted darker than allowed by Puerto Rico law, so he used his siren to initiate a stop. Instead of pulling over immediately, Joel indicated with his hand [**20] that Officer Ortiz should follow him. He eventually stopped at the gate in front of his driveway. Several family members exited the house and walked toward the car. Officer Evette Berrios Torres saw Joel trying to move a black object on the floor of the driver's seat with his foot while his mother was leaning against the car and trying to pick something up with her hand. Recognizing the object was a black pistol (which turned out to be a Glock model 26, .9 mm pistol) Officer Berrios seized it. Joel was arrested.

In a motion to suppress the gun, Joel detailed the same basic sequence of events as recited above and argued multiple reasons why the warrantless search of the vehicle violated his Fourth Amendment rights: law enforcement had no reasonable suspicion there was contraband in the car, the traffic stop for the allegedly illegal tint on the windows was clearly a pretext to search the vehicle, and he was forcibly removed from the vehicle after law enforcement opened the car door and saw the gun in plain view. Joel attached three documents to his motion: the warrant application and supporting affidavit for the car search (obtained after Joel was pulled over and arrested), a written declaration by [**21] Joel's father (who was at the house when Joel stopped the car and saw the series of events unfold), and a photo of the driver's area of the car (taken a few steps back from the open driver's side door). Joel did not request an evidentiary hearing. Joel's father's recitation of what occurred during the traffic stop did not conflict with law enforcement's rendition: he briefly stated that, after Joel stopped his car at the front gate of their home, "law enforcement personnel surround[ed] the vehicle and instruct[ed] Joel to unlock the car door." "After Joel unlocked the

door, law enforcement personnel opened the car door and removed him from the vehicle." **[*22]** Joel was not given a traffic ticket for the tinted windows on this day and his father was not given such a ticket for the vehicle at any other time.

The government opposed Joel's motion to suppress, arguing, first, the dark tint on the windows gave Officer Ortiz probable cause to stop the car and second, no Fourth Amendment violation had occurred because the gun had been seen in plain view and thus properly seized without searching the car. The trial judge denied the motion to suppress in a written order, relying on the documents Joel filed in support [**22] of his motion. 12

During the trial, Puerto Rico Officer Ortiz (assigned to the Bureau of Alcohol, Tobacco, Firearms ("ATF") as an investigating agent but part of the CSF in 2008 and 2009) provided more detail about how the gun was found in Joel's father's car. 13 Officer Ortiz had been assigned to be in a police cruiser on the day in question, ready to act if needed. In addition to describing the sequence of events as laid out above, he stated he pulled the car over both because the car had darkly tinted windows and because he needed to confirm Joel was in the car. He testified that while he did not test the tint level that day, he is trained in how to test the tint on the windows and perceived a difference between the tints on the front versus the back windows, with the front window tinted impermissibly darker.

He testified that when Joel stopped the car in front of the gate at the house, Joel opened the driver's side door and placed his left leg outside of the car, while honking the horn and calling out for someone to open the gate. Officer Ortiz told Joel to turn off the car, but another officer opened the front passenger door and turned off the ignition. Officer Ortiz said Joel's mother [**23] came out of the house saying "leave my son alone," then indicated she was going to faint, all the while leaning against the car and reaching inside. Agent Berrios walked up to Officer Ortiz to help with Joel's mother and Agent Berrios saw the firearm on the floor of the car, near Joel's right foot. According to Officer Ortiz, "tactical operations [are] a heated, . . . hostile environment." The situation was so heated, according to Officer Ortiz, that he couldn't give the ticket for the dark tint on the windows and then he forgot to issue the ticket once everyone was at the police station. Following Officer Ortiz's testimony, Joel renewed his motion to suppress the gun. Again, it was denied.

HN11 We have long-established standards for reviewing a district court's denial of a motion to suppress: we consider the motion anew, giving full deference to the district court's findings of fact (disturbing them only if the record reveals the findings were clearly wrong), and upholding the denial "if any reasonable view of the record supports it." United States v. Gonsalves, 859 F.3d 95, 103 (1st Cir. 2017). Stated slightly differently, "[u]nder this rubric we can likewise affirm a denial on any basis apparent in the record." Id. Applying this standard, we affirm [**24] the denial of Joel's motion to suppress the gun.

[*23] We can quickly dispose of one argument Joel raises here: that the trial judge erred by not conducting a pretrial hearing before denying the motion to suppress, instead relying on the search warrant application and supporting affidavit completed after the warrantless stop. The government responds that Joel was not entitled to a hearing on his motion because he hadn't pointed to any disputed facts. ***HN12*** Generally, the district court has discretion as to whether it holds an evidentiary hearing when considering a motion to suppress evidence, so abuse of discretion informs our review of the trial court's denial of an evidentiary hearing. United States v. Ponzo, 853 F.3d 558, 572 (1st Cir. 2017). "A defendant has no right to an evidentiary hearing unless he shows 'that material facts are in doubt or dispute, and that such facts cannot reliably be resolved on a paper record' -- most critically, he 'must show that there are factual disputes which, if resolved in his favor, would entitle him to the requested relief.'" Id. (quoting United States v. Francois, 715 F.3d 21, 32 (1st Cir. 2013)). Notably, Joel still has not pointed to any material facts about the stop and seizure of the gun he believes are in dispute. Additionally, Joel never requested a hearing, either [**25] in his pretrial motion to suppress or when he renewed his motion during trial. The trial judge did not, therefore, abuse her discretion by not holding a hearing.

Aside from his procedural gripe, Joel argues Agent Ortiz did not have any "specific articulable facts to justify" pulling him over because the level of tint on the windows was merely a disingenuous pretext for the stop. The government says the tinted windows provided plenty justification. We agree. ***HN13*** There is no doubt that "[a]n officer can stop a car if he sees a driver commit a traffic offense, even if the stop is an excuse to investigate something else." United States v. McGregor, 650 F.3d 813, 820 (1st Cir. 2011) (citing Whren v. United States, 517 U.S. 806, 810, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996)). The officer can then order those inside the vehicle to get out. Id. (citing Maryland v. Wilson, 519 U.S. 408, 410, 414-15, 117 S. Ct. 882, 137 L. Ed. 2d 41 (1997)). Officer Ortiz, based on his training and experience, testified he initiated the traffic stop in part because he noticed Joel's unlawfully tinted front window. This alone, under the governing case law, is adequate justification for the stop. 14

Joel raises no challenge to the seizure of the gun once he stopped the car. And there is no dispute Officer Berrios saw the gun on the floor of the driver's seat when Joel was exiting the car, which the trial judge so found. The denial of Joel's suppression [**26] motion is, therefore, affirmed.

EVIDENTIARY ISSUES

The defendants raise a litany of evidentiary issues, which we address in turn. These issues include whether:

- the handwritten notes from law enforcement's interviews with codefendants should have been produced to the defendants;
- the handwritten notes on a series of documents admitted as business records were properly admitted for a limited purpose;

[*24] • the scope of cross-examination of some witnesses was improperly limited;

- proffered impeachment testimony was erroneously disallowed; and
- the trial judge should not have allowed multiple witnesses to testify about the same investigatory incident.

In order to sensibly address these issues, we need to introduce four men who were indicted along with the defendants but pled guilty before trial and became CWs for the government: Manuel Ferrer Haddock ("Ferrer"), Jaime Lopez Canales ("Lopez"), Jamie Rivera Nieves ("Rivera"), and Miguel Vega Delgado ("Vega").[15] Testifying law enforcement agents involved in the investigation also feature prominently in the evidentiary challenges raised in this next section. We will provide a summary of their testimony that is relevant to the evidentiary issues raised [**27] here as we go.

Rough notes from interviews with CWs

(Suanette, Juan)

Law enforcement officers jotted down informal notes when they formally interviewed CW Lopez and CW Ferrer. They then prepared official reports which Suanette and Juan received. Both defendants contend the "rough notes" should have been given to them during the trial upon their request. Suanette's arguments here focus on the notes' supposed value as exculpatory evidence while Juan's claims hinge on an alleged Jencks Act violation.

CW Lopez

(Suanette)

In August 2014, Suanette filed a motion to compel the production of the "rough notes" from CW Lopez's interview. Invoking both the Jencks Act (18 U.S.C. § 3500) and Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963) (but not explaining how either entitled her to the notes she sought), Suanette said these "rough notes" were "fundamental in corroborating the witness information in the DEA report and to verify" the consistency of CW Lopez's testimony before the grand jury and trial jury. Suanette also asked that, in the alternative, the notes be produced to the trial court for in camera inspection before ruling.

At the court's request that Suanette explain her "need" for the notes, Suanette provided additional details to support her motion for [**28] production. Suanette admitted she'd received "synops[e]s" of the Lopez interviews, but complained they were insufficient because they captured the agents' "interpretation[] of what . . . [Lopez] told them" and not the raw information straight from his mouth. Also in her response, Suanette claimed although she had evidence CW Lopez had not mentioned her during his first interview she was also entitled to the rough notes from his other four interviews because if Lopez did not name her in any of these subsequent interviews then those notes would also be exculpatory evidence.

In a written order, the trial judge denied Suanette's motion to compel, concluding neither the Jencks Act nor Brady entitled her to the rough notes. Labeling "sheer speculation" Suanette's argument that the agents' interview summaries might be missing "evidence or information favorable to them of an exculpatory nature," she concluded Suanette had not made a "colorable [Brady] claim." With respect to Suanette's Jencks Act contention, the judge concluded she would only be entitled to the **[*25]** notes if CW Lopez actually adopted the contents of the agents' interview notes as his own.

On appeal, Suanette again argues that, because [**29] the official DEA report of all CW Lopez's interviews did not include her name in connection with the conspiracy, the rough notes are exculpatory as well as impeachment evidence that should have been produced pursuant to Brady: exculpatory because the reasonable inference from the failure to name her is that she was not involved in the conspiracy and impeachment because the notes contradicted CW Lopez's trial testimony. There, he testified that he bought marijuana from Suanette at the drug point in Villa Margarita on

Amapola Street from 2007 to 2008 and she "collected the money" from the customers while her husband handed over the product, information which, if true, would have found its way into the rough notes. Plus, according to Suanette, his testimony about her alleged involvement supposedly conflicted with that of CW Vega. (We'll get into this supposed conflicting testimony a little later when we address Suanette's sufficiency argument). By not having this supposedly exculpatory evidence during the trial Suanette says she was prejudiced.[16 ±] If there was doubt about the relevance of the rough notes, the trial judge, at minimum, should have made an in camera inspection of them.

The government [**30] responds that the trial judge did not abuse her discretion when she denied Suanette's motion to compel because the rough notes were immaterial and not likely exculpatory. Immaterial because Suanette already knew and had evidence CW Lopez never told law enforcement agents she was part of the drug conspiracy -- her name was not on the list of alleged members of the drug trafficking organization that law enforcement included in their official report from the interviews with him. Further, as the government points out, Suanette cross-examined CW Lopez at length about whether he had mentioned her during his formal interviews. The rough notes were also immaterial because CW Lopez was not the only witness to testify about Suanette's drug transactions.

As for the trial judge's refusal to inspect the notes in camera, the government says Brady does not allow fishing expeditions and Suanette did not show the notes would contain exculpatory or impeachment information that was not already in other documents in her possession. As we view it, the government has the better arguments on this issue, and we'll explain why after first setting out the governing legal principles.

HN14 A trial judge's conclusion [**31] that information is not exculpatory under Brady gets examined through an abuse-of-discretion lens. United States v. Schneiderhan, 404 F.3d 73, 78 (1st Cir. 2005) (citing United States v. Rosario-Peralta, 175 F.3d 48, 55 (1st Cir. 1999)). To make an effective Brady claim, "[t]he evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the [government], either willfully or inadvertently; and prejudice must have ensued." United States v. Aviles-Colon, 536 F.3d 1, 19 (1st Cir. 2008) (quoting Strickler v. Greene, 527 U.S. 263, 281-82, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999)). "The import of withholding evidence **[*26]** is heightened 'where the evidence is highly impeaching or when the witness' testimony is uncorroborated and essential to the conviction.'" Id. (emphasis omitted) (quoting Conley v. United States, 415 F.3d 183, 189 (1st Cir. 2005)). "Suppressed impeachment evidence is immaterial under Brady, however, if the evidence is cumulative or impeaches on a collateral issue." Id. (quoting Conley, 415 F.3d at 189).

After reviewing the record as a whole, we do not see how Suanette could have gained anything substantial from the production of the rough notes from CW Lopez's interviews, even if, had they been produced, they revealed no mention of Suanette's name. Here's why: as Suanette herself discusses in her brief, she asked one of the law enforcement agents who interviewed CW Lopez if Lopez ever mentioned Suanette during his interviews. [**32] The agent said he couldn't remember. When pressed again, the agent agreed that he would have "[m]ost likely" written her name down if CW Lopez had mentioned her. This exchange makes the precise point Suanette says she needed to make.

Moreover -- and as the government indicates -- the DEA's official report of the interviews with CW Lopez included a list of the members of the drug trafficking organization under investigation that CW Lopez fingered, and Suanette wasn't on that list. We fail to see how the absence of her name from the rough notes -- if that is what the rough notes actually confirmed -- could have had more qualitative value than the absence of her name from the list of members in the DEA's summary report. In consequence, the rough notes were immaterial and also cumulative of other evidence in the record. Therefore, the trial judge's decision denying Suanette's motion to compel production of the rough notes was hardly an abuse of her discretion.

CW Ferrer

(Juan)

During the trial testimony of CW Ferrer, Juan's counsel, pursuant to the Jencks Act, moved for production of the rough notes from CW Ferrer's interviews with law enforcement agents. Juan's counsel wanted more than the [**33] summaries already provided by the government because, according to him, CW Ferrer was adding new details to his testimony and because of this, he wanted the notes to compare what CW Ferrer said back then to what he was saying in court. The trial judge verbally denied the motion and addressed it again when she ruled on Suanette's written motions for the production of the rough notes from CW Lopez's interviews. In the written order, the trial judge left the production issue open for further consideration depending on how he answered a couple of questions. Because the Jencks Act requires a witness to sign or verify a third party's accounting of the witness's testimony, she ruled she would ask CW Ferrer if the government agents read their notes back to him during his interview and whether he had approved the notes as read back.

During trial, the trial judge did precisely as she said she would. CW Ferrer stated he could recall some notes read back to him but not whether he approved them, or if he did, whether it was verbally or by signing something. He was interviewed on at least seven occasions and did not recall what or how much was read back to him on any given day, nor whether he had [**34] raised any discrepancies between what he said and what was read back to him. The trial judge declined to order production of the rough notes because she lacked the required affirmative evidence that CW Ferrer adopted the written notes as his own. Therefore, they did not qualify as Jencks Act statements.

[*27] On appeal, Juan contests the trial court's findings. He asserts CW Ferrer did in fact adopt the rough notes because he testified that the notes were read back to him even if he could not remember if he approved them verbally or in writing and did not recall discussion of any discrepancies. Jencks requires nothing more, he says. The government says that the trial judge committed no error. Juan had all he needed to cross-examine Ferrer about his interviews with the agents -- the DEA-6 report (the official report of the investigation).

HN15 Our review of the trial judge's Jencks Act determination is for abuse of discretion. See Schneiderhan, 404 F.3d at 78.

HN16 "The Jencks Act, 18 U.S.C. § 3500, in concert with Fed. R. Crim. P. 26.2, controls the production of certain witness statements in the government's possession." United States v. Marrero-Ortiz, 160 F.3d 768, 775 (1st Cir. 1998). "[T]o be discoverable under the Jencks Act, a government record of a witness interview must be substantially a verbatim account." United States v. Sepulveda, 15 F.3d 1161, 1179 (1st Cir. 1993) (citing United States v. Newton, 891 F.2d 944, 953-54 (1st Cir. 1989)). [**35] In addition -- and most importantly here -- "the account must have been signed or otherwise verified by the witness himself." Id. (citing United States v. Gonzalez-Sanchez, 825 F.2d 572, 586-87 (1st Cir. 1987)). 17

HN18 "Where a defendant requests discovery of potential Jencks material, our precedent requires the district judge to conduct an independent investigation of any such materials and determine whether these materials are discoverable under the Jencks Act." United States v. Gonzalez-Melendez, 570 F.3d 1, 3 (1st Cir. 2009) (per curiam) (emphasis omitted).

> This independent review may include such measures as *in camera* inspection of any disputed document(s), and conducting a hearing to evaluate extrinsic evidence, including taking the testimony of the witness whose [**36] potential statements are at issue as well as the person who prepared the written document in which those statements appear.

Id. at 3 n.2 (citing Goldberg v. United States, 425 U.S. 94, 108-09, 96 S. Ct. 1338, 47 L. Ed. 2d 603 (1976)). As we previously described, the trial judge did just that: she undertook the required "independent investigation" when she probed CW Ferrer's recollection and understanding of the agents' interview notes. See id. at 3 (emphasis omitted). She even expanded the inquiry by allowing Juan's attorney to ask clarifying questions before explaining her Jencks Act ruling.

In support of his claim of error, Juan insists the facts here are analogous to those in Goldberg, where a CW who had been interviewed by prosecutors a few times prior to trial couldn't perfectly recall whether the attorneys' handwritten notes were read back to him or whether he was **[*28]** always asked if the notes were accurate. 425 U.S. at 100-101. Even though the Goldberg court remanded, this case is not helpful to Juan because the Supreme Court was primarily focused on whether the notes were attorney work product. Id. at 101-08. Indeed, part of the scope of the ordered remand was for the trial court to determine, as a matter of fact, whether the "notes were actually read back to [him] and whether he adopted or approved [**37] them." Id. at 110. We conclude then, as the trial judge did, that the government was not obligated to produce these rough notes because the trial court's investigation did not establish CW Ferrer approved the notes taken during his interviews and the notes did not therefore qualify as statements pursuant to the Jencks Act. See Marrero-Ortiz, 160 F.3d at 775-76 (holding the government had no obligation to produce rough notes taken by a government official during an interview with an individual who testified for the government at trial because there was no evidence on the record that the witness adopted the notes). The trial judge did not abuse her discretion.

Business records from North Sight Communications

(Joel, Carlos, Juan)

One piece of physical evidence admitted during trial was a set of business records from North Sight Communications ("North Sight"), a business with whom one of the members of the conspiracy had an account for cell phones with a walkie-talkie-type functionality. Some of the pages of the records had handwritten notes, linking each specific device

associated with the account to a specific individual. Joel, Carlos, and Juan challenge the trial judge's decision to admit these handwritten notes.

Here's how these [**38] notes and records were allowed: about halfway through the trial, Angel Miranda, Vice President of North Sight, testified that his company offered Motorola iDEN service, which allowed a cellular phone to be used as a walkie-talkie as well as a regular phone and, with the right plan, one phone could radio broadcast to several other units at the same time. Miranda explained that when a fleet (or large group) of devices was issued under one account, a North Sight employee made handwritten notes as a regular course of business on the customer's printed account documents connecting the name of each individual who had a device with the device assigned to that individual. These handwritten notes were made while the customer stood in front of the employee and indicated who had which device listed on the account. These hard copy invoices and other records on the account were then stored in physical files.

The file for the account opened under the name Carlos Rivera Rivera (aka Carlitos, Suanette's husband, one of the individuals indicted along with the other defendants in this case) included approximately 100 pages and was admitted as an exhibit at trial, over the defendants' objections, under [**39] the business record exception to the rule against hearsay. In line with Miranda's description of North Sight's business practice, some of the pages reflected handwritten names and numbers, including the first names or nicknames of some of the defendants presently appealing.

The defendants objected on the basis that the handwritten notations presented impermissible double hearsay. After lengthy voir dire of the witness and much argument by counsel, the trial judge concluded the "handwritten notes on those pages [were] . . . probative of association between members of the alleged conspiracy. **[*29]** There's no other possible probative value." The trial judge proposed a limiting instruction for the jury to make it clear that the jury could only consider the handwritten notes for the purpose of deciding whether the names reflected in the notations might be associated with one another. According to the trial judge, "there's no double hearsay problem if that's the only purpose for which it's allowed." The trial judge issued two written orders on this evidentiary ruling as well.

The trial judge issued the following limiting instruction to the jury:

> Members of the jury, I instruct you that you can consider [**40] all of the 105 pages of this Exhibit 177 for the truth of the data or the matters contained in those pages except for the annotations handwritten by the North Sight Communications employee whose source of information was an outsider and which appear at these particular pages, 33-34, 61, 69, 94-95, 99 and 101. These handwritten notes on these specific pages can only be considered by you, the jury, for the limited purpose of determining whether the same -- referring to the notes, handwritten notes -- establish association among the alleged members of the drug conspiracy as charged in the Indictment.

Joel asked the trial judge to reconsider her ruling and she explained in an order considering his request that the admission of the handwritten notes was "for the limited purpose of the jury determining whether the records establish an association between the alleged members of the drug conspiracy charged. This is no different than tallies, logs, ledgers, contact lists . . . which are admitted in determining association in criminal activity."

HN19 We review preserved objections to "[e]videntiary rulings, including whether to admit evidence over a hearsay objection, . . . for abuse of discretion." [**41] United States v. Colon-Diaz, 521 F.3d 29, 33 (1st Cir. 2008).

Juan, Carlos, and Joel all argue that the judge was wrong to admit these handwritten notes for any purpose because the accuracy and veracity of the notes could not be confirmed. These defendants emphasize that, if the jury was allowed to consider whether the notes showed association between the alleged conspirators, then the jury would first have to consider the notes to be true and accurate.

The government responds that the handwritten notations were properly admitted with limitation to infer association between the names in the notes and the defendants on trial as well as the association between the alleged members of the conspiracy -- the court's limiting instruction appropriately tailored these purposes. This court, argues the government, has previously allowed circumstantial evidence of association between alleged coconspirators when, for example, a payroll list seized from a defendant's bedroom was admitted for this limited purpose and the jury was told not to consider it for the truth of the information contained on it. United States v. Hensel, 699 F.2d 18, 33-35 (1st Cir. 1983). The government also points us to the admission of a hand-written drug ledger kept on a pad of paper by a codefendant for the purpose of showing the existence [**42] of a drug conspiracy. Casas, 356 F.3d at 124-25. Of course, as Juan and Joel point out, these cases involved a codefendant as the author of the writings, whereas here there is no suggestion that a codefendant wrote the notations on the admitted North Sight business records or even verified what had been written. This is an important distinction, which the trial judge did not appear to consider when articulating her decision to allow the handwritten notes here.

[*30] We need not decide whether this distinction means the trial judge erred when she admitted the exhibit for the limited purpose expressed because, even if she erred, the error was harmless and doesn't warrant disturbing the jury

verdict. 18 See United States v. Laureano-Pérez, 797 F.3d 45, 68-69 (1st Cir. 2015) (declining to decide whether an error had been made because the error, if any, was harmless). HN20 Improperly admitted evidence "is harmless if it is 'highly probable that the error did not influence the verdict.'" United States v. Meises, 645 F.3d 5, 23 (1st Cir. 2011) (quoting United States v. Flores-de-Jesus, 569 F.3d 8, 27 (1st Cir. 2009)); see also United States v. Montijo-Maysonet, 974 F.3d 34, 49 (1st Cir. 2020) (error may be considered harmless when "the record minus the improper[ly admitted evidence] gives us 'fair assurance . . . that the [jurors'] judgment was not substantially swayed by the error'" (quoting Kotteakos v. United States, 328 U.S. 750, 765, 66 S. Ct. 1239, 90 L. Ed. 1557 (1946))). The harmlessness "inquiry requires a case-specific examination of factors that [**43] include 'the centrality of the tainted material,' its prejudicial impact, and any other indications that 'the error affected the factfinder's resolution of a material issue.'" Meises, 645 F.3d at 24 (quoting Sepulveda, 15 F.3d at 1182). The burden to establish harmlessness falls on the government, id.; the government carried this burden by pointing to the ample other evidence that by itself convincingly established the necessary connections among Juan, Carlos, and Joel, and with other alleged members of the drug enterprise.

The government has shown that, without the exhibit in question, there was other evidence that Juan, Carlos, and Joel knew each other and associated with other alleged members of the drug conspiracy. For example, with respect to Juan, one of the testifying law enforcement agents (Special Agent Cedeño) told the jury during trial that the notebook seized from the kitchen of Juan's apartment included a list of names and phone numbers; the names corresponded to nicknames of several of the other alleged members of the organization. Another law enforcement agent testified about watching Juan's authority over other suspected members during one part of the investigation when Juan ordered [**44] these men to comply with that law enforcement agent's instructions to the group of them. And CW Vega testified he observed Juan receive pre-packaged drugs from other people CW Vega knew to be members of the drug enterprise.

In addition, CW Ferrer testified about his participation in meetings among alleged coconspirators including Juan, Carlos, and Joel. One such meeting occurred when CW Ferrer and his cousin were physically with Carlos and Joel; CW Ferrer testified he watched Joel speak with Juan using a walkie-talkie type of function on his cell phone to ask Juan questions about why Juan was not with them in person. These examples of evidence in the record show that apart from the handwritten **[*31]** notes the jury had other convincing evidence from which to find the alleged members of the drug enterprise knew each other and spent time together. As a result, the government has shown that any error in admitting the North Sight business records with the handwritten notations was harmless because it was "highly probable" this single exhibit did not sway the verdict. Id. at 23.

Limited cross-examinations

(Idalia, Juan, Joel, Carlos)

Up next is whether the trial judge impermissibly limited the scope [**45] of cross-examination of some of the witnesses. HN21 Idalia, Juan, Joel, and Carlos contend the trial judge did just that in violation of their Sixth Amendment Confrontation Clause rights. "The Confrontation Clause of the Sixth Amendment guarantees criminal defendants the right to cross-examine witnesses who testify against them," United States v. Casey, 825 F.3d 1, 23-24 (1st Cir. 2016) (citing United States v. Vega Molina, 407 F.3d 511, 522 (1st Cir. 2005)), so defendants can "test the believability of a witness and the truth of his testimony," United States v. Rivera-Donate, 682 F.3d 120, 126 (1st Cir. 2012) (quoting United States v. Gonzalez-Vazquez, 219 F.3d 37, 45 (1st Cir. 2000)) (internal quotation omitted)). "This right is not without limits, however; the district court wields considerable discretion to impose 'reasonable limits' on cross-examination." Casey, 825 F.3d at 24 (quoting United States v. Raymond, 697 F.3d 32, 39-40 (1st Cir. 2012)). "When a witness's credibility is at issue, the trial court may limit cross-examination as long as the court allows sufficient leeway to establish a reasonably complete picture of the witness' veracity, bias, and motivation." Rivera-Donate, 682 F.3d at 126 (quoting Gonzalez-Vazquez, 219 F.3d at 45) (internal quotation omitted). "We review de novo whether a defendant was afforded a reasonable opportunity to impeach a witness, and for abuse of discretion limitations the trial court imposed on that opportunity." Casey, 825 F.3d at 24 (citing Raymond, 697 F.3d at 39-40).

CW Vega

(Idalia)

Idalia argues the trial judge infringed her Confrontation Clause rights when Idalia was not permitted to question CW Vega about whether he had met with the prosecutors outside the courtroom after [**46] he started testifying. Here's how this controversy unfolded during trial: CW Vega was one of the witnesses who testified about his observations of, and interactions with, Idalia. When he first testified about the timing and frequency of his crack cocaine purchases from Idalia at the residence she shared with her husband, codefendant Carlos, during the summer of 2006, CW Vega said he

bought crack from a "woman" but he was not asked if the woman from whom he bought the crack was in the courtroom and he did not offer an in-court identification on his own. He indicated he had not known -- or ever found out -- who the "woman" was the first time he encountered her when he'd approached Carlos's house looking to buy crack from Carlos but bought instead from the woman who'd emerged from the house when he had yelled for Carlos. CW Vega also testified that he bought vials of crack from this woman at this house around sixteen times over a one-to-two month period and, during this same period, he also bought vials of crack from Carlos from this same house.

A few days into his testimony (he testified on at least nine separate days), the prosecutor sought to introduce a photo of Idalia. Idalia's attorney [**47] objected because **[*32]** CW Vega had not identified Idalia a few days prior when he had been testifying about his crack purchases from the woman at Carlos's house. At the court's suggestion, the prosecutor asked CW Vega if the woman from whom he had purchased the crack was in the courtroom and he identified Idalia without any detectable hesitation in open court.

The next morning, Idalia's counsel raised a concern about potential prosecutorial misconduct after a codefendant's counsel reported to her that his client had seen two of the prosecutors leave the room in the courthouse where testifying witnesses typically cooled their heels when they weren't on the stand. The codefendant was clear that she had not seen CW Vega (or anyone else) in the room, but Idalia's counsel expressed a concern that, because CW Vega initially testified he had not known the identity of the woman at Carlos's house who sold him crack in June 2006 but a few days into his testimony identified Idalia in court as that woman, the prosecutors had influenced his memory and subsequent identification of her.

One of the prosecutors volunteered that she had been in the witness room with CW Vega a couple of times to discuss scheduling [**48] and dietary matters but adamantly denied discussing any part of his testimony with him. The trial judge lightly reprimanded Idalia's counsel for jumping to conclusions without a stronger basis because seeing prosecutors emerge from a room holding trial papers did not in and of itself mean there was any misconduct. The trial judge also reminded Idalia's counsel that she would have an opportunity to cross-examine CW Vega about his in-court identification.

During Idalia's cross-examination, CW Vega answered "no" when first asked whether he had met with the prosecutors during his testimony. After CW Vega confirmed his testimony with respect to not knowing the identity of the woman the first night a woman sold him the vials of crack at Carlos's house and then identifying Idalia when asked if he saw the same woman in the courtroom, Idalia asked whether he had met with the prosecutors during the lunch recess immediately prior to his in-court identification of Idalia. The trial judge did not allow CW Vega to answer the question, removed the jury from the courtroom, and admonished Idalia's counsel for her inquiry into this subject when the trial judge had already inquired and resolved it when [**49] she determined there was no indication of any actual misconduct.

On appeal, Idalia asserts the trial judge erred by not allowing her to cross-examine CW Vega about his suspected lie when he said he had not met with prosecutors during the course of his several days of testimony. Idalia contends that, beyond the issue of impeaching CW Vega's credibility, the limit placed on her cross-examination meant she could not explore his "reliability and potential suggestiveness." Idalia refers to this issue in her brief as a violation of her "due process" rights but her analysis is actually structured as a Sixth Amendment Confrontation Clause challenge, so we shall follow her lead and proceed under this latter framework.

The government counters Idalia had been permitted to cross-examine CW Vega extensively about his interactions with the woman who sold him crack as well as his subsequent identification of this woman as Idalia. As such, says the government, the trial judge did not abuse her discretion to reasonably limit the scope of cross-examination.

After reviewing the transcript of CW Vega's testimony on direct and cross-examination, in our view, there is no doubt Idalia was provided an adequate, reasonable opportunity to impeach [**50] CW Vega's **[*33]** direct testimony about his interactions with -- and identification of -- the woman from whom he bought the vials of crack. Idalia asked a series of detailed questions checking his testimony from the day he discussed his purchases to the day he identified Idalia in court. Idalia also asked a long series of questions delving into the history of CW Vega's drug use and effects he experienced while using drugs.

When the trial judge cut off Idalia's attempt to bring up the conversations in the witness room between CW Vega and the prosecutors, she explained her concern that the trial would turn into an evidentiary hearing about the dubious conversation and she did not think such inquiry was justified based on what Idalia's codefendant reported observing and what the prosecutor acknowledged. But Idalia was permitted to continue her cross-examination after the trial judge told counsel to refrain from the inquiry about the witness room. Moreover, as Idalia herself points out, CW Vega's credibility was laid to bare when he admitted during cross-examination by counsel for a codefendant that he had deceived both probation officers and judges in the past, which she concludes must mean he [**51] has no trouble with lying to authority. Therefore, CW Vega's credibility and reliability were explored during his cross-examinations by more than one codefendant's attorney and the jury had abundant information from which to decide whether he testified truthfully about

his identification of Idalia as the woman who sold crack to him. [19] For all of these reasons, the record shows the trial judge gave Idalia plenty of leeway to impeach CW Vega's identification of Idalia as one of the people from whom he bought crack. The reasonable limitations she placed on the scope of the cross-examination were not an abuse of discretion. See Casey, 825 F.3d at 24.

Sergeant Rivera Vélez

(Juan)

We turn now to Juan's complaint that the trial judge did not allow him to explore, during cross-examination, a meeting a trial witness had with the prosecutors during a court recess after the witness had started testifying. Puerto Rico Police Sergeant Luis Rivera Vélez was the first witness to testify at the trial. After a couple of days of testimony, the government disclosed to the trial judge, outside the presence of the jury, that it had met with this witness the morning of his second day of testimony to review and cut down the number [**52] of exhibits the government was admitting into evidence through him. Apparently there was some confusion on the government's part about whether it had been allowed to meet with its witness in the middle of his direct testimony. But after hearing the government's disclosure and explanation for what happened, the trial judge ultimately decided the government and the witness had genuinely misunderstood the court's instructions and **[*34]** had not violated a court order when they met to discuss the trial exhibits.

During Juan's cross-examination of Sergeant Rivera, the trial judge interrupted his inquiry about whether the sergeant recalled the trial judge's instruction during the first day of testimony about not discussing the testimony with anyone. During a conversation at side bar, the trial judge admonished Juan's counsel for his attempt to impeach the witness based on an event that had been discussed, researched, and determined to have been the result of some confusion on the part of the government's attorneys and not of misconduct on the part of either the government or the witness. The trial judge ruled that, absent some indication that the witness had met with the government after the discussion [**53] following the government's own admission about the misunderstanding, Juan's counsel could not exploit the early misunderstanding as part of his attempt to impeach the witness's credibility.

Juan frames his complaint about the limitation on the scope of cross-examination as a violation of his right to confront Sergeant Rivera. Without citing any case law, Juan asserts the cross-examination would have been relevant to show the witness had a tendency to ignore the law, including the trial judge's explicit instructions. The government responds that Sergeant Rivera was not at fault for meeting with the government mid-testimony because, as the trial judge explicitly found, he had been guided by the government's misunderstanding of the rules. The government also argues -- and the transcripts confirm -- that Juan and his codefendants were permitted to cross-examine Sergeant Rivera at length about various topics discussed during the direct examination.

After reviewing the testimony and discussion around this testimony, it is clear Juan had a full opportunity to cross-examine this witness and that the trial judge placed a reasonable and permissible limitation on the scope of Juan's cross-examination. [**54] We perceive no abuse of discretion here either. See Casey, 825 F.3d at 24.

Other witnesses

(Joel and Carlos)

Joel argues (and Carlos joins) his confrontation rights were infringed when the trial judge limited the scope of cross-examination and/or re-cross-examination for five of the government's witnesses. Joel contends the limitations improperly prevented him and his codefendants from developing their defense theory that other drug points were operating in the same area where they were accused of operating. Joel provides five examples of where he tried, during cross-examination, to elicit information about how other organizations' drugs were packaged but the trial judge cut it off as irrelevant and collateral.

The government picks apart these five examples by pointing out that the defendants did in fact have the opportunity to cross-examine the witnesses they now claim they were precluded from questioning. Moreover, the government argues there were several witnesses who did testify about different drug packaging types and colors and, ultimately, that the jury got to hear the defendants' theory about more than one drug enterprise operating out of the same areas. A review of the trial transcripts supports the [**55] government's assertions here. Even when the trial judge sustained an objection from the government after Joel or a codefendant asked a specific question about other drug points or drug packaging details, the government asserts -- and the record shows -- that the **[*35]** defense got its main point across. [20] This particular drug trafficking enterprise on trial was not the only game in town.

HN23 As we stated above, "the district court wields considerable discretion to impose 'reasonable limits' on cross-examination." Casey, 825 F.3d at 24 (quoting Raymond, 697 F.3d at 39-40). Reviewing de novo whether Joel and the other defendants were given a reasonable opportunity to question each of the witnesses discussed in Joel's brief and the limitations on the scope of the cross or re-cross for abuse of discretion, we see the transcripts are replete with examples of these witnesses acknowledging other drug points operated by different people in areas similar to where the defendants before us were accused of operating their drug trafficking business. See id. In addition, we see no abuse of the trial judge's discretion to limit the scope of their cross-examination and re-cross-examination of these witnesses.

Excluded defense [56] witnesses**

(Juan)

Juan challenges the trial judge's decision not to allow him to present witnesses to impeach certain testimony offered by CW Ferrer. To place Juan's challenge in context, here is the short version of what happened at trial. CW Ferrer testified (among many other topics) about his drug addiction and that he supported his drug addiction by "selling drugs; sometimes my grandma would give me some money, and, well, I would just hustle around. And I had a legal job." When another defense counsel explored the details of the "legal job" during cross-examination, CW Ferrer testified that he had worked at a restaurant and as a security guard. Juan eventually attempted to bring in witnesses whose proffered testimony was to prove CW Ferrer had not worked at two of the locations at which he claimed to have been employed in 2006 and 2008. Citing impermissible character evidence and collateral impeachment, the government objected. After considering Juan's proffer, the trial judge concluded these witnesses would not be allowed to testify. Their testimonies, she reasoned, fell squarely within the rule against impeachment by collateral evidence, had no other relevance or probative value, [**57] and would not have been material to the guilt or innocence of any defendant.

Before us, Juan challenges those conclusions and argues he should have been allowed to call those witnesses who could expose Ferrer's lies about his work history -- lies designed to minimize this CW's role in the conspiracy and hide the fact that he was -- in Juan's words -- a "major drug trafficker" for the organization. For its part, the government countered that Juan's proffered evidence would have been "the very definition of collateral." We agree.

HN24 "A matter is collateral if 'the matter itself is not relevant in the litigation to establish a fact of consequence, i.e., not relevant for a purpose other than mere contradiction of the in-court testimony of **[*36]** the witness.'" United States v. Marino, 277 F.3d 11, 24 (1st Cir. 2002) (quoting United States v. Beauchamp, 986 F.2d 1, 4 (1st Cir. 1993)). In general, a party may not present extrinsic evidence for the sole purpose of impeaching a witness on a collateral matter. Id. The decision on whether a matter is collateral or material is within the district court's discretion. United States v. DeCologero, 530 F.3d 36, 60 (1st Cir. 2008). Like the trial judge, we fail to see how CW Ferrer's employment contemporaneous with his participation in a drug distribution conspiracy has any bearing on the issue of Juan's own culpability in that [**58] same conspiracy. 21

Moreover, as Juan admits, he was allowed to and in fact did cross-examine CW Ferrer about the witness's employment history. In sum, the trial judge did not abuse her discretion when she precluded Juan's proffered impeachment witnesses from testifying.

Repetitive testimony

(Joel & Carlos)

In Joel and Carlos's final evidentiary issue, they contend the trial lasted 128 days in part because the trial judge allowed the government to present needlessly long and repetitive testimony about a few specific events, unearthed during the investigation, which ultimately had an unduly prejudicial effect on them in violation of Federal Rule of Evidence 403. 22 Joel (joined by Carlos) provides three examples:

- Five law enforcement agents testified about the same surveillance day which yielded a military box with drugs inside and a video taken of Joel yelling "snitch you are going to die" to an unidentified listener.
- Five law enforcement agents testified about the discovery of the gun in Joel's father's car the day that Joel was pulled over.
- Four agents testified about a shooting incident on the basketball court in Villa Margarita in which Joel got shot in the arm and went to the hospital. 23

In response, the government, [**59] siding with the trial judge's reasoning, says the testimony about these events was not needlessly repetitive or cumulative just because more than one witness testified about the same event since each witness added a different part or perspective of **[*37]** the incident. Each witness here challenged as needlessly cumulative was in fact needed to share either different personal observations or vantage points of the incident in question or to testify to a distinct temporal part of the day the event occurred.

HN26 "Evidence is cumulative if repetitive, and if 'the small increment of probability it adds may not warrant the time spent in introducing it.'" Elwood v. Pina, 815 F.2d 173, 178 (1st Cir. 1987) (quoting 1 Weinstein's Evidence ¶ 401[07] at 401-47-48 (1985)). Rule 403 allows a trial judge "to 'exclude relevant evidence if its probative value is substantially outweighed by a danger of' certain pitfalls, including . . . 'needlessly presenting cumulative evidence.'" United States v. Mehanna, 735 F.3d 32, 59 (1st Cir. 2013) (quoting Fed. R. Evid. 403). Abuse of discretion guides our review of the district court's Rule 403 determination.[24] United States v. Dudley, 804 F.3d 506, 515 (1st Cir. 2015). "An abuse of discretion showing is not an easy one to make. We afford deference to the district court's weighing of probative value versus unfair effect, only in 'extraordinarily compelling circumstances' [**60] reversing that 'on-the-spot judgment' from 'the vista of a cold appellate record.'" United States v. DiRosa, 761 F.3d 144, 154 (1st Cir. 2014) (quoting United States v. Doe, 741 F.3d 217, 229 (1st Cir. 2013)). In doing so, we acknowledge the trial judge's "better position to assess the admissibility of the evidence in the context of the particular case before it." Mehanna, 735 F.3d at 59 (quoting Sprint/United Mgmt. Co. v. Mendelsohn, 552 U.S. 379, 387, 128 S. Ct. 1140, 170 L. Ed. 2d 1 (2008)).

HN27 There is no debate that the trial judge has "considerable latitude in Rule 403 rulings." United States v. King, 827 F.2d 864, 867 (1st Cir. 1987). And it is true, as Carlos points out, that we have previously upheld a district court's decision to exclude cumulative evidence on Rule 403 grounds as an appropriate discretionary call. See id. But such an exclusionary call did not happen here -- just the opposite -- so saying we've upheld discretionary exclusionary rulings in the past without adequately explaining why it was error here to allow the evidence is not helpful to Carlos's cause. We have surveyed the testimonies Joel contests and as in other cases we have examined, we find that "[a]lthough [defendants] can point to instances in which the same story was told more than once, such repetition" here "encompassed new and relevant details." United States v. Munoz-Franco, 487 F.3d 25, 67 (1st Cir. 2007). Additionally, Carlos fails to show prejudice. See id. (noting "no indication" that "the arguably cumulative nature of the evidence affected the outcome [**61] of the trial in any way"). To whatever extent the testimonies from witnesses overlapped, the trial judge did not abuse her discretion by allowing each of the witnesses, who added to the story, to testify over Joel's cumulative evidence objection.

With that conclusion, we move on to the next set of issues.

UNFAIR TRIAL

(Joel, Carlos, Juan, Idalia)

Four defendants assert they were denied a fair trial for several reasons and **[*38]** because of purported errors by the trial judge.[25] They claim they had to contend with:

- a biased and prejudiced jury,
- a biased trial judge, and
- a series of improper prosecutorial tactics.[26]

We'll delve into each of these arguments in turn, first setting the scene for each claim.

Jury bias

Joel, Carlos, Juan, and Idalia each argue there was at least one incident during the trial that either 1) showed the jury was biased against them or 2) caused the jury to be biased against them and their codefendants. Premise one is based upon two separate notes written to the trial judge during trial. Premise two arises from one juror's disclosure that he had recognized one of the law enforcement witnesses. Before sifting through the details of what happened at trial, we first spell out [**62] some general principles that guide our thinking.

"'***HN28*** All would agree that an impartial jury is an integral component of a fair trial' and must be 'jealously safeguarded.'" Sampson v. United States, 724 F.3d 150, 160 (1st Cir. 2013) (alteration adopted) (quoting Neron v. Tierney, 841 F.2d 1197, 1200-01 (1st Cir. 1988)). That said, "[a] district court has broad, though not unlimited, discretion to determine the extent and nature of its inquiry into allegations of juror bias." United States v. Corbin, 590

F.2d 398, 400 (1st Cir. 1979) (citations omitted). We review the trial judge's approach and resolution to allegations of jury bias for abuse of discretion. United States v. Ramírez-Rivera, 800 F.3d 1, 38 (1st Cir. 2015).

HN29 "[D]efendants seeking to establish juror misconduct bear an initial burden only of coming forward with a 'colorable or plausible' claim." United States v. French, 904 F.3d 111, 117 (1st Cir. 2018) (French I) (quoting United States v. Zimny, 846 F.3d 458, 464 (1st Cir. 2017)). "Once defendants have met this burden, an 'unflagging duty' falls to the district court to investigate the claim." Id. (quoting Zimny, 846 F.3d at 464). "The type of investigation the district court chooses to conduct is within the district court's discretion; it may hold a formal evidentiary hearing, but depending on the circumstances, such a hearing may not be required." Id. (citing Zimny, 846 F.3d at 465); see also United States v. French, 977 F.3d 114, 122 (1st Cir. 2020) (French II) (referring to a "formal evidentiary hearing" as "the gold standard for an inquiry into alleged juror misconduct" but reaffirming that "a full evidentiary proceeding [**63] in response to an allegation of juror bias" is "not required")). "[T]he court's primary obligation is to fashion a responsible procedure for ascertaining whether misconduct actually occurred and if so, whether it was prejudicial." French I, 904 F.3d at 117 (quoting Zimny, 846 F.3d at 465).

> So long as the district judge erects, and employs, a suitable framework for investigating the allegation and gauging its **[*39]** effects, and thereafter spells out her findings with adequate specificity to permit informed appellate review, the court's "determination . . . deserves great respect and . . . should not be disturbed in the absence of a patent abuse of discretion."

French II, 977 F.3d at 122 (brackets omitted) (quoting United States v. Boylan, 898 F.2d 230, 258 (1st Cir. 1990)).

Notes from jurors

(Idalia, Juan, Carlos, Joel)

Idalia argues that two notes from the jury sent to the judge during trial make evident she did not receive a fair trial because these notes showed juror bias and the trial judge did not adequately examine or consider these bias indicators when brought to her attention. 27 We'll start by telling you what these notes were about and how the trial judge responded to them.

A couple of weeks into the trial, the judge received a note from one juror, who wrote that she felt "uncomfortable with the intimidating looks" [**64] from Joel's attorney and Carlos's attorney. Idalia's attorney asked the trial judge to excuse this juror, which the judge declined to do, explaining it would be like punishing the juror for bringing a concern to the attention of the court. The judge discussed how to phrase the response to the juror with the attorneys but stated she would not hold a hearing to ask the juror whether the juror had shared the concerns with other jurors or whether the juror's concerns were affecting the evaluation of the evidence unless the same concern was raised again. The judge provided the attorneys with an opportunity to object to the wording of her response, but after the attorneys spoke with their respective clients about the proposed response, everyone agreed to the trial judge's wording without further ado. The response returned to the juror read:

> I have received your note and discussed it with counsel. Regarding atty. Milanés and atty Burgos their response to your note is that they meant no disrespect to you and neither had nor have any intention to intimidate you. If there is any instance in which you need to address the court, feel free to do that.

There was a brief discussion about whether to [**65] admonish the juror not to discuss this concern with any other juror, but the trial judge decided she did not want to assume the juror had already spoken about it and did not want to discourage bringing these kinds of concerns to the court's attention. The trial judge also reminded Joel's attorney not to look at the jury when he questioned witnesses, as had apparently been his trend so far.

The trial judge received the second note at issue at the end of the first day of closing arguments after the court session had ended. The jury had collectively sent a note asking if the judge could ensure they left the courthouse before the defendants and the defendants' family members "in order to avoid any encounters which are occurring on a daily basis." The trial judge responded to the note asking the jury to "advise to which defendants you are referring to when you mention encounters that **[*40]** are occurring on a daily basis." The jury replied it was referring to Suanette and Idalia and their family members. When the trial judge discussed the notes with counsel, Idalia's attorney expressed concern that this note meant the jury was biased against the defendants. She did not, however, request a hearing [**66] to further explore the jurors' request. The trial judge remarked that counsel was reading more into the note than what the jury had actually written and reminded all the attorneys that their clients were entitled to a fair trial but not a perfect one. The trial then continued with closing arguments.

Idalia filed a written motion for reconsideration, again expressing her concern about the ability of the jury to be impartial and asking the trial judge to conduct further inquiry into the jury note. And depending on how the jurors responded,

Idalia sought to poll each juror to assess whether anyone's impartiality had been compromised. The judge denied the motion in a written order, stating the jury had not referred to any specific incidents with the defendants and had simply asked to be allowed to leave the courthouse at the end of the day ahead of the defendants. The judge wrote: "There is no reason to read into this request the concerns of bias and lack of impartiality by the jurors that the two defendants are injecting into it. Nor have jurors voiced any concerns for their safety whatsoever."

On appeal, Idalia states the trial judge abused her discretion by not conducting a deeper inquiry [**67] into the jury's concerns expressed in these two notes, resulting in a verdict against her rendered by a partial jury. The government counters that the trial judge responded appropriately to each note. As for the note about the intimidating looks from two attorneys, the government is skeptical that the note could have implied any prejudice to Idalia because, importantly, her attorney wasn't one of the two mentioned. With respect to the note requesting a head start out of the building at the end of each day, the government argues the trial judge responded promptly to find out to which defendants the note referred and that Idalia has not provided any reason to doubt the judge's conclusion that the jury had not been tainted by their encounters with Idalia and Suanette as they left the building.

We agree with the government that there is no indication the trial judge abused her discretion when she denied Idalia's requests for hearings to further inquire about the two notes submitted by the jury. 28 See French I, 904 F.3d at 117. The record shows the trial judge brought the jury's respective concerns to the defendants as soon as was possible, carefully considered the best response, and allowed the defendants and their [**68] counsel to assist with the responses. Given the trial judge's wide discretion to decide how to investigate a defendant's concerns about jury bias, we conclude her response to the defendants' concerns was both reasonable and appropriately measured. We espy no error and move on to the next argument about jury bias.

Basketball

(Joel)

Two months into trial, one of the jurors submitted a written note to the trial judge, telling her he recognized a witness who had testified the day before as one of the men with whom he played in the same regular pick-up basketball games. The juror **[*41]** wrote the note to bring his recognition of the witness to the trial judge's attention and to raise a concern that other players in the basketball league may be witnesses because he understood many of the players were involved in law enforcement.

The trial judge brought the juror into the courtroom to explore on the record this juror's connection to the witness. In response to the trial judge's questions, he indicated he'd been playing in this over-35 league for about a year. Twice a week or so he showed up at the court -- located behind the police station in Trujillo Alto -- and played with and against whomever else [**69] showed up that night as well. The juror told the trial judge he'd played with this witness five to ten times total but didn't know him personally and had never discussed this case with him or any other police officer. The juror hadn't recognized the witness's name when it was read as a part of a list of witnesses during voir dire because, as he told the judge, he didn't know any of the other players personally and couldn't provide anyone's full name. When the witness in question took the stand the day before, however, the juror recognized him. He didn't alert the court immediately because he didn't know how to do so during open court. Instead, he told the court security officer at the end of the day who suggested the juror write the note that made its way to the trial judge.

The trial judge concluded neither the juror nor the witness engaged in any misconduct and the juror had an adequate explanation about how he brought the issue to the trial judge's attention. The trial judge denied the defendants' request to excuse the juror because she concluded the proper remedy was to instruct the juror not to play basketball with this group until the trial was over rather than dismiss him from [**70] the jury.

The next day, the judge called the juror back for another conversation at the bench. She asked the juror whether he would give more weight or credibility to the police officer's testimony because they had played basketball together. The juror said no because he doesn't know anything about the witness other than what he had seen on the basketball court and had no reason to give more weight to his testimony than to another witness based on the experiences on the basketball court. Following this exchange, the juror departed the courtroom and the trial judge invited further comment from all counsel. The prosecutor declined and counsel for Joel, Carlos, and Juan raised no additional demur.

Now before us, Joel argues the trial judge abused her discretion by refusing to dismiss this juror. Joel says the juror's "failure to inform" the court that he played basketball with police officers "reflected bias in favo[r] of the police with whom he played every week." 29

[*42] The government argues the trial judge did not abuse her discretion when she denied the defendants' request to dismiss the juror because the issue was brought promptly to her attention, she conducted an in-depth [**71] inquiry

into the connection between the juror and the witness, and appropriately concluded the juror was not biased by his "casual" connection to this witness.

We can agree with Joel on one point: a "juror's interpersonal relationships" are an important factor to consider. But this situation is a far cry from the case Joel cites in support of his argument. In French I, a defense counsel learned after the conviction and sentencing of his client for marijuana production and distribution conspiracy that one of the jurors had lied on her jury questionnaire and during voir dire when she had not disclosed that her son had been convicted a few times of offenses related to his use and distribution of marijuana and cocaine. 904 F.3d at 114-15. The trial judge denied the codefendants' motion for a new trial and request for an evidentiary hearing, but we reversed and remanded after holding that an investigation into the juror's misconduct had been warranted. Id. at 116, 120. The defendants appealed again when upon remand the judge again denied their motion for a new trial following an evidentiary hearing to determine whether the juror had in fact engaged in misconduct and whether the misconduct, if any, was prejudicial to the [**72] defendant. French II, 977 F.3d at 121-22. We affirmed the district court's denial, rejecting the defendants' arguments that the court's investigation had not been thorough or structured enough. Id. at 122. We also stated that "'[t]he touchstone' of our appellate review is 'reasonableness.'" Id. at 122 (quoting United States v. Paniagua-Ramos, 251 F.3d 242, 249 (1st Cir. 2001)).

Here, the juror's misconduct, as the defendants see it, was not disclosing his basketball-playing activities and not recognizing the name of one of the witnesses as one of the players who plays in the informal, pick-up basketball games during voir dire. But after the juror notified the trial judge that he had recognized the witness on the stand, the trial judge immediately questioned the juror, at length, twice. The trial judge was reasonably satisfied that the juror credibly denied having any personal relationship with the witness, and that he had not intentionally misled the court during voir dire. Also reasonable was the trial judge's determination that the juror was not going to favor the witness's testimony because of the time he had spent with the witness playing basketball. The trial judge's actions and decisions here do not reflect any abuse in her exercise of the wide discretion she had to decide how to investigate [**73] a claim of juror misconduct. See French I, 904 F.3d at 117.

Next up: the third and final claim of jury bias.

Knowing some defendants were detained

(Joel & Carlos)

Three times during the trial, the defendants raised concerns to the trial judge that the jurors had either seen them in handcuffs or deduced some of them were detained pending the outcome of the trial based on a newspaper article published during the trial. We describe each incident before getting into the arguments Joel and Carlos make about why the trial judge didn't address each appropriately.

[*43] Incident number 1 - whether some jurors saw some defendants handcuffed in the courthouse elevator: one mid-trial day (in September 2015), as the jurors left the courtroom, they may have caught sight of some defendants, in handcuffs, in an elevator on their way to the courthouse cell block. The defendants asked the trial judge to ask the jurors about what they saw and to declare a mistrial if warranted. The judge ultimately did not question the jurors, but she held an evidentiary hearing at which she heard testimony from four of the defendants about this encounter and she considered video evidence from the courthouse hallways which captured the juror's movements [**74] with respect to the defendants' positions in the elevator.

After the hearing, the trial judge determined that if any of the jurors saw the defendants in handcuffs, it was for a brief moment only and, regardless, "none of the jurors exchanged looks with the defendants." She concluded the encounter did not warrant a mistrial because this was not a happenstance in which the jurors had seen the defendants shackled or gagged. She compared the quick glance one juror made in the direction of the elevator (which she observed in the video) to the quick glimpses the jurors had caught in United States v. Ayres, in which we held that a "quick glimpse once or twice of the defendants in handcuffs out of court . . . would hardly dilute their presumption of innocence" because a moment's view of defendants in handcuffs is far different from cases in which the jurors saw a defendant shackled for longer periods of time or were "repeatedly reminded of the defendants' confinement." 725 F.2d 806, 812-13 (1st Cir. 1984).

Incident number 2 - whether some jurors saw defendants handcuffed in the courtroom: near the end of trial (in December 2015), during a lunchtime recess, the courtroom door was ajar for some moments when a trial spectator left [**75] the courtroom while some defendants were in handcuffs in the courtroom and the jury was walking in the hallway past the courtroom door. The defendants requested a mistrial. The trial judge held a hearing, heard the defendants' versions of events, considered courtroom security video footage, then concluded none of the jurors could have seen inside the courtroom for more than "a matter of seconds" and "[n]o reasonable minded person who view[ed]

the videos in an impartial manner could conclude" the jurors saw the defendants handcuffed. The defendants also tried to provide the trial judge with photographic and videographic evidence that purported to reenact the scene, but the trial judge refused to consider these reenactments and ultimately denied the motion for mistrial.

Incident number 3 - whether the jurors read a newspaper article from which they might have deduced some of the defendants in their trial were detained: also towards the end of trial, an article published in a local newspaper disclosed that two drug trials had been suspended by the court for a few days after a gastroenteritis virus started spreading through the detention center where many defendants in those trials were [**76] being held. Joel and Carlos filed a motion for a hearing to determine whether a mistrial would be required and asked that the trial judge poll the jurors to find out whether they had seen the article and inferred from it that Joel and Carlos were two of the defendants referred to in the article. The judge denied the motion because the article had not named the cases or the defendants involved, rendering Joel and Carlos's concerns too speculative. She also commented that Joel and Carlos's concern over the potential release of their identities was not completely credible because they had filed **[*44]** a motion two days later on the public docket of their case complaining about the conditions of the detention center in which they were being held. The trial judge also distinguished a juror's knowledge of a defendant's detention from a juror seeing a defendant shackled and handcuffed in a courtroom, which she concluded had not occurred.

HN31 The denial of a motion for mistrial is reviewed for abuse of discretion. Gonsalves, 859 F.3d at 107. As we indicated above, "[c]onducting an inquiry into a colorable question of jury taint is a delicate matter, and there is no pat procedure for such an inquiry." United States v. Bradshaw, 281 F.3d 278, 290 (1st Cir. 2002) (citing Evans v. Young, 854 F.2d 1081, 1083-84 (7th Cir. 1988)). "[T]he trial court [**77] has wide discretion to fashion an appropriate procedure for assessing whether the jury has been exposed to substantively damaging information, and if so, whether cognizable prejudice is an inevitable and ineradicable concomitant of that exposure." Id.

Joel and Carlos argue to us that the trial judge was wrong not to ask the jurors whether they saw defendants handcuffed and, if so, what and who they saw, as well as whether they had seen the newspaper article. 30 We note, however, that, in response to both courthouse incidents, the trial judge conducted an evidentiary hearing to investigate whether the jury could have seen or did see the defendants in handcuffs. This, as we earlier noted, is "the gold standard" for an inquiry into an incident that could create or lead to juror bias. French II, 977 F.3d at 122. While the trial judge did not bring jurors in to question them, she did consider testimony from the defendants as well as photographs and/or video footage from courthouse security cameras and provided detailed written summaries about what the defendants told her during the hearing and what she found after reviewing the videos.

The defendants do not claim the trial judge was clearly wrong with any of her factual [**78] determinations after the hearings -- the standard of review we would apply to her findings. See Bradshaw, 281 F.3d at 291 ("[W]e accept the trial court's factual findings only to the extent that they are not clearly erroneous." (citation omitted)). Instead, they insist she needed to make a direct inquiry to the jurors to find out what they saw. The government counters that she conducted an appropriate inquiry into these two incidents and her findings are unassailable.

True, the trial judge, in her written orders explaining the denial of the motions for mistrial, did not expressly address the defendants' requests to question the members of the jury. However, her written "statements of reasons" indicate and demonstrate her detailed consideration about whether the jurors could have seen the defendants during the two incidents. In other words, she answered the question of whether the jury had possibly viewed the defendants in cuffs another way. That she did not bring jurors in for questioning was not an abuse of her discretion to determine how to investigate **[*45]** these possible sources of bias. See Bradshaw, 281 F.3d at 290. 31

Turning our attention briefly to the newspaper article, the trial judge also did not err by choosing not to ask the jurors [**79] about whether they had read it. ***HN33*** As the government argues, if the jurors read the article, then, at worst, they may have inferred that a defendant in this trial was being detained, but mere awareness that one or more defendants were detained during the trial is not sufficiently prejudicial to require a mistrial. See Ayres, 725 F.2d at 812-13; see also United States v. Deandrade, 600 F.3d 115, 119 (2d Cir. 2010) ("[A] brief and fleeting comment on the defendant's incarceration during trial, without more, does not impair the presumption of innocence to such an extent that a mistrial is required."). Asking the jurors one-by-one whether they saw it would have only served to tip them off that the article existed.

All in all, there was no hint the trial judge abused her discretion when she investigated and addressed the defendants' various jury bias concerns.

Judicial Bias (Joel & Carlos)

(Joel & Carlos)

We now turn our attention to whether the trial judge showed bias against some of the defendants' trial attorneys. Several times throughout the trial, the judge admonished some of the defense counsel's behavior in open court, whether for laughing, talking, or otherwise disrupting or interrupting the proceedings. Several times, counsel brought concerns to the court that she was [**80] treating them differently than the government's attorneys to the detriment of the defendants. Joel and Carlos now contend her bias toward their trial attorneys resulted in an unfair trial.

For example, in September 2014, Carlos's trial counsel filed a miscellaneous motion asking the trial judge to note his concern that her tone and demeanor (including facial expressions and looks reflecting "impatience, annoyance, and ire") with and towards him was markedly different from the way she treated the government's attorneys and could be interpreted by the jury as "animosity" against the defense. The trial judge noted counsel's "subjective perceptions" and concern in a written order entered on the docket stating she had needed to address the defense attorneys' "courtroom manners" outside the presence of the jury and repeating that she had had "no issues" with the defendants' courtroom behavior. When the trial judge read her order into the record, she added:

> And I reaffirm, I have absolutely no partiality toward the Government or the defendants. I have said the defendants have always displayed utmost respect. They have been exemplary in their behavior. Unfortunately, their attorneys do not show [**81] the same respect for the [c]ourt that their clients do. When you measure up to them, you won't need this, you won't need this kind of statement from the [c]ourt. It is not the defendants; it is you.

A second example is from January 2015, when Carlos's trial counsel again raised a concern that the trial judge was treating him differently from the government's attorneys and asked her to declare a mistrial because her "rebuking tone, menacing looks and accompanying body language" **[*46]** towards him were not looked on favorably by the jury. In the alternative, Carlos's counsel asked the judge to "refrain[] from engaging defense attorneys in that tone, with that body language, and that sort of look[]." The trial judge denied the oral motion, commenting that she had been working hard to ensure the trial was fair to the defendants but that some of the defendants' attorney's behavior had been less than exemplary. The trial judge stated she had no bias against any of the defendants and was explaining each of her evidentiary rulings in detail so that all the parties understood the decisions she was making throughout the trial.

A third example occurred in February 2015, when, in the middle of testimony [**82] on direct examination from a law enforcement officer, the trial judge said "Mr. Burgos" (Carlos's trial counsel's name) twice to get him to stop whatever he was doing at counsel table at the time. The testifying officer subsequently, and outside of the jury's presence, accused Mr. Burgos of making a disparaging remark -- calling the officer "smartass" while he was testifying. Mr. Burgos admitted to conferring with co-counsel during the witness's testimony but categorically denied making any remarks towards the witness. The trial judge took Mr. Burgos at his word but warned him that she would take further action if any other witnesses made a similar complaint about his courtroom behavior.

The trial transcripts are replete with examples of the trial judge commenting on Mr. Burgos's behavior. Several times throughout witness testimony, hearings held to address issues which arose during trial, and during bench conferences, the trial judge asked Mr. Burgos (in addition to other attorneys) to stop laughing or otherwise disrupting what she and others were trying to listen to.

Before us, Carlos argues that the trial judge repeatedly mistreated Mr. Burgos in front of the jury, discrediting him [**83] several times throughout the trial, which served to deprive his client of a fair trial. Joel, who likewise voices fair trial concerns, acknowledges that, using the cold appellate record, it is hard to show the way in which the trial judge's looks and tone toward Mr. Burgos and some of the other attorneys prejudiced the defendants, but also argues the judge's attitude towards Mr. Burgos was clearly noted by the jury, which created prejudice against the defendants.

HN34 "When addressing allegations of judicial bias, we consider 'whether the comments were improper and, if so, whether the complaining party can show serious prejudice.'" United States v. Ayala-Vazquez, 751 F.3d 1, 24 (1st Cir. 2014) (quoting DeCologero, 530 F.3d at 56). "[W]e consider isolated incidents in light of the entire transcript so as to guard against magnification on appeal of instances which were of little importance in their setting." United States v. Espinal-Almeida, 699 F.3d 588, 607 (1st Cir. 2012) (brackets omitted) (quoting United States v. Ofray-Campos, 534 F.3d 1, 33 (1st Cir. 2008)). "Clearly a trial judge should be fair and impartial in her comments during a jury trial because a fair trial in a fair tribunal is a basic requirement of due process." Id. (citing United States v. de la Cruz-Paulino, 61 F.3d 986, 997 (1st Cir. 1995)). "However, a finding of partiality should be reached only from an abiding impression left from a reading of the entire record." Id. (quoting de la Cruz-Paulino, 61 F.3d at 997). "And even an imperfect [**84] trial is not necessarily an unfair trial." Ayala-Vazquez, 751 F.3d at 24 (citing Espinal-Almeida, 699 F.3d at 608).

HN35 "As a general rule, a judge's mid-trial remarks critical of counsel are insufficient to sustain a claim of judicial bias or **[*47]** partiality against the client." Logue v. Dore, 103 F.3d 1040, 1046 (1st Cir. 1997) (citing Liteky v. United States, 510 U.S. 540, 555, 114 S. Ct. 1147, 127 L. Ed. 2d 474 (1994)). As in Logue, the comments and demeanor the defendants complain of here were interspersed throughout the trial, sometimes at sidebar or when the jury was not in the room and sometimes in the presence of the jury. ***HN36*** "Statements that are made by a judge in the jury's

presence are, of course, subjected to stricter scrutiny." Id. There were clearly several incidents where the trial judge admonished Mr. Burgos, both in and out of the presence of the jury. The incidents described above illustrate Carlos and Joel's general concerns. The record is clear that there was no love lost between Mr. Burgos and the trial judge. But, as the government points out, the direct reprimands and discussions regarding Mr. Burgos's courtroom behavior were mostly conducted outside the presence of the jury. We further note that this is not a situation in which the trial judge impermissibly hijacked witness questioning or made inappropriate commentary about any defendant or vouched for a witness's [**85] credibility. See United States v. Raymundí-Hernández, 984 F.3d 127, 152-57 (1st Cir. 2020) (reversing convictions because the trial judge's comments during trial and sua sponte cross-examination-like questioning of a key defense witness indicated a pro-prosecution bias and likely affected the outcome of the trial). Lastly, after reviewing the trial transcripts, we note that some of the trial judge's admonitions to Mr. Burgos may well have been justified by his courtroom behavior.

To the extent any of the trial judge's demeanor or commentary may have come close to crossing the line, we observe that her end-of-trial instructions to the jury addressed her reproaches to counsel:

> It is the duty of the [c]ourt to admonish an attorney, members of the jury, who out of zeal for his or her cause, does something which the [c]ourt deems is not in keeping with the rules of evidence or with the rules of procedure. You are to draw no inference against the party represented by an attorney to whom an admonish [sic] of the [c]ourt was addressed during the trial of this case.

The government argues that if the jury perceived any animosity, it was cured by the trial judge's instruction to the jury. We agree. ***HN37*** "In assessing the impact of a judge's actions, jury instructions can [**86] be a means of allaying potential prejudice." Logue, 103 F.3d at 1046-47. In our view, this instruction was "sufficient to palliate any untoward effects" from the trial judge's words, tone, or demeanor towards defendants' attorneys throughout the trial. Id. at 1047.

Examining the record as a whole, we conclude that the judge's statements on the record and demeanor in the courtroom did not indicate judicial partiality against the defendants or in favor of the government and "did not compromise the fundamental fairness of the proceedings." Logue, 103 F.3d at 1046; see also United States v. Rodriguez-Rivera, 473 F.3d 21, 28 (1st Cir. 2007).

Prosecutors' tactics

(Joel & Carlos)

Joel (joined by Carlos) asserts the prosecutors engaged in several improper tactics throughout the trial, all of which (in their view) add to the pile of reasons how and why their trial was ultimately unfair. The government treats their arguments as alleging prosecutorial misconduct and while neither defendant specifically frames this issue in those precise **[*48]** terms, we agree that we should address the arguments using our well-established framework for reviewing claims of prosecutor misconduct. ***HN38*** "We review preserved claims de novo and unpreserved claims for plain error." United States v. Rosario-Pérez, 957 F.3d 277, 299 (1st Cir. 2020) (citing United States v. Sepúlveda-Hernández, 752 F.3d 22, 31 (1st Cir. 2014)). "Either way, we may first consider whether the government's conduct [**87] was, in fact, improper." Id. (citing United States v. Duval, 496 F.3d 64, 78 (1st Cir. 2007)). "If so, we will only reverse if the misconduct 'so poisoned the well that the trial's outcome was likely affected.'" Id. (quoting United States v. Vázquez-Larrauri, 778 F.3d 276, 283 (1st Cir. 2015)). "Four factors guide our analysis: (1) the severity of the prosecutor's misconduct, including whether it was deliberate or accidental; (2) the context in which the misconduct occurred; (3) whether the judge gave curative instructions and the likely effect of such instructions; and (4) the strength of the evidence against the defendant." Id. (quoting Vázquez-Larrauri, 778 F.3d at 283).

We briefly summarize the ways in which Joel and Carlos assert the prosecutors misbehaved throughout the trial. We also provide the government's explanation about why and how each instance did not actually amount to misconduct by the prosecutors in this case. To cut to the chase, our examination of each incident alleged by Joel and Carlos has not uncovered any misconduct on the part of the prosecutors. Here's what's alleged:

> #x2022; Allowing Sergeant Rivera to testify about the drug distribution activities of two codefendants who were not part of the trial when this witness did not have personal knowledge about these activities and was relying on what others had told [**88] him. As the government points out (and the trial transcripts confirm), the basis for this witness's knowledge was revealed while he was on the stand and the prosecutor admitted she was mistaken by her belief that he'd had personal knowledge about the activities of the two codefendants in question. In addition, the trial judge struck the testimony and instructed the jury that they were to disregard it.

#x2022; Speaking with Sergeant Rivera mid-testimony and refusing to turn over the reports from his interviews with the defendants so Joel wouldn't have the benefit of these reports to prepare his cross-examination. The government's misunderstanding regarding the trial judge's order not to meet with witnesses once their testimony had begun has already been examined supra. In response to Joel's accusation that the government withheld Rivera's reports from various interviews with witnesses, the government asserts the record clearly reflects that the reports Joel sought either did not exist because Rivera had not written them, or Joel acknowledged he had ultimately received the report. As the government argues, there is no indication of prosecutorial misconduct here either because the government [**89] complied with all the discovery orders.

#x2022; Referring to Joel as the operator of the drug trafficking organization with a few different witnesses. The government asserts -- and the trial transcripts show -- either the witness volunteered Joel's role as part of an answer to a question, the witness was testifying to Joel's own description of his role, or the prosecutor's question implying Joel was a leader was posed during the grand jury proceedings and only came out during the trial through proper memory refreshing for the particular witness. **[*49]** The government also shows us where the jury heard unchallenged testimony several times from witnesses that Joel was the leader of the enterprise.

#x2022; Asking CW Ferrer during re-direct examination about other defendants who had pled guilty. The government argues there was no misconduct when the government asked CW Ferrer about whether another codefendant had pled guilty because Joel had introduced this series of questions when, during his cross-examination, he started inquiring about how much jail time Ferrer had received upon his own guilty plea and whether other codefendants had also simply been sentenced to time served.

As we previewed above, [**90] our review of the record reveals each of these claims "lack[s] arguable merit" because none shows actual prosecutorial misconduct. See Rosario-Pérez, 957 F.3d at 299. So, we do not explore them any further.[32]

Cumulative error

(Joel, Carlos, Juan)

Joel, Carlos, and Juan also argue that the combined effect of the errors they say were made during trial (including the purported evidentiary errors and the ways in which they claim they were denied a fair trial) leads to the inescapable conclusion that they are entitled to a new trial. Joel's list of errors he claims add up to cumulative error include jury bias, judicial bias, improper prosecutorial tactics, evidentiary errors, and the denial of the motion to suppress the gun found in his father's car. Juan says the cumulative effect of the evidentiary errors he raised in addition to the list of ways he asserts (without explaining why) he was denied a fair trial will justify setting aside his convictions. Carlos, for his part, asserts the combination of the trial errors, including those related to jury bias, judicial bias, improper prosecutor tactics, evidentiary errors, and insufficient access **[*50]** to transcripts all deprived him of a fair trial.

HN39 When we are presented with [**91] a cumulative error argument, "[w]e review the rulings for abuse of discretion before deciding what cumulative effect any errors may have had." United States v. Centeno-González, 989 F.3d 36, 50 (1st Cir. 2021) (quoting United States v. Perez-Montanez, 202 F.3d 434, 439 (1st Cir. 2000)). "In doing so, we 'must consider each such claim against the background of the case as a whole, paying particular weight to factors such as the nature and number of the errors committed; their interrelationship, if any . . .; and the strength of the government's case.'" Id. (ellipsis in original) (quoting Sepulveda, 15 F.3d at 1196). Joel, Carlos, and Juan's cumulative error claims fail because we have not found any errors in any of the ways they contend they were denied a fair trial and the one potential evidentiary error (admitting the handwritten notations on the North Sight Communications business records) was harmless. See id. at 50.

And with that, we move on to the evidentiary sufficiency arguments.

SUFFICIENCY OF THE EVIDENCE

Suanette and Juan each argue they were entitled to judgments of acquittal on all the counts with which they were charged. Recall Suanette was convicted of conspiracy to distribute narcotics as a seller and a facilitator as well as of aiding and abetting the distribution of marijuana. Juan was charged with and convicted of two conspiracy counts [**92] (to distribute narcotics in the role of a "runner" and to possess firearms in furtherance of drug trafficking) and four aiding-and-abetting-drug-distribution counts (heroin, crack cocaine, powder cocaine, and marijuana). Both defendants

moved for judgments of acquittal at the end of the government's presentation of evidence and again at the end of all the defendants' presentations of evidence. The trial judge denied both motions.

HN40 "Because the defendants made the same arguments before the district court (therefore preserving this legal issue for our review), our task is to consider afresh their arguments about why they say they are entitled to judgments of acquittal." United States v. Chan, 981 F.3d 39, 51 (1st Cir. 2020). "That is, we give no deference to the district court's assessment of the same arguments when it evaluated the defendants' motions for judgments of acquittal." Id. "To complete our review, we 'consider all the evidence, direct and circumstantial, in the light most favorable to the prosecution, draw all reasonable inferences consistent with the verdict, and avoid credibility judgments, to determine whether a rational jury could have found the defendants guilty beyond a reasonable doubt.'" Id. at 55 (cleaned up) (quoting United States v. Negrón-Sostre, 790 F.3d 295, 307 (1st Cir. 2015)). If we [**93] agree with the defendants that the trial judge erred when she denied their motions for judgments of acquittal, then we must order acquittal. Montijo-Maysonet, 974 F.3d at 41 ("[T]he Double Jeopardy Clause precludes a second trial once the reviewing court has found the evidence legally insufficient." (quoting Burks v. United States, 437 U.S. 1, 18, 98 S. Ct. 2141, 57 L. Ed. 2d 1 (1978))). 33

[*51] Suanette's and Juan's primary involvement in the drug trafficking organization were in two separate locations and the evidence of their respective roles came from different witnesses. So we'll address their challenges to the sufficiency of the evidence to support their convictions separately.

Suanette's convictions

The testimony about Suanette's involvement in the drug trafficking organization came from two of the CWs we've encountered already: Lopez and Vega. 34 They each testified about their personal observations of Suanette providing sellers within the organization with baggies of marijuana as well as working sideby-side with her husband and codefendant Carlitos. CW Lopez testified that he was a drug addict who bought and sold marijuana and cocaine at the Villa Margarita "curve" on Amapola Street. In 2005 or 2006, CW Lopez watched the drug distribution hierarchy and process while he built a fence for Carlos (the defendant on [**94] appeal before us). Lopez

> could see the sellers when [Carlos] would give them their shifts, when he would give them material to sell. . . . [W]hen they finished working, they could come to the area in front of his house to do the tally, they would go to the carport in Joel's house, and there they would tally up. And anything regarding the drug point, well, [Carlos] was the man.

After CW Lopez finished building the fence, he became a lookout for the curve drug point, a "runner" (according to Lopez, that's someone who picked up money from clients, bought the drugs, then delivered the drugs back to the clients), 35 a direct seller, and a buyer. CW Lopez described the recharge process: when a seller ran low on product (whether heroin, cocaine, or marijuana), the seller would ask for a "recharge" through a handheld radio. Carlitos resupplied marijuana. CW Lopez testified he bought marijuana from Suanette at the drug point in Villa Margarita on Amapola Street from 2007 to 2008. According to CW Lopez, he did not observe Suanette resupply marijuana to the drug point, but "[she] always accompanied Carlitos when he was selling and she collected the money. If you went to buy, she would be the one collecting [**95] the money."

CW Vega testified he worked as a seller for the drug organization and sold marijuana from the abandoned house at the "curve." CW Vega often saw Carlitos in a truck and sometimes saw Suanette drive the same truck, especially when CW Vega had radioed Carlitos about needing to be resupplied because she often delivered the next batch of marijuana in that truck after Joel had called CW Vega to tell him the new inventory was on its way. CW Vega said Suanette delivered around 80 baggies of marijuana around 7:30 a.m. four times a week in 2007 and the beginning of 2008. CW Vega also testified he did not see Suanette sell marijuana to customers at the drug point, but he paid her for the resupply by handing money to the lookout on duty who gave the money to Suanette.

The trial judge denied Suanette's first motion for judgment of acquittal in a written **[*52]** order, explaining that Suanette's assistance to her husband Carlitos at the drug point, her interaction as seller to CW Lopez, and her role as resupplier for Vega was enough to show she was "part of the organized structure and coordination of the drug point and that she worked with and assisted these other defendants in the possession [**96] with intent to distribute all types of drugs sold." After the jury rendered its verdict on January 5, 2016, Suanette filed a written Rule 29 motion for a judgment of acquittal which the trial judge denied without explanation.

On appeal, Suanette argues the government failed to prove she either conspired to distribute narcotics or aided and abetted the marijuana distribution.

Conspiracy to distribute narcotics

HN41 "To convict someone of [drug-conspiracy], the government must prove beyond a reasonable doubt that he knew about and voluntarily participated in the conspiracy, 'intending to commit the underlying substantive offense.'" United States v. Acosta-Colon, 741 F.3d 179, 190 (1st Cir. 2013) (quoting United States v. De Jesus, 230 F.3d 1, 5 (1st Cir. 2000)). "[P]roof may come from direct evidence or circumstantial evidence, like inferences drawn 'from members' words and actions and from the interdependence of activities and persons involved.'" Id. (quoting De Jesus, 230 F.3d at 5).

Suanette contends there was insufficient evidence to convict her of conspiracy because living with Carlitos did not mean she had joined the conspiracy, she was indifferent to the success of the drug selling enterprise, she had no interdependence with any members of the conspiracy, she didn't know what the others were doing, and there was no evidence she associated [**97] with anyone else in the conspiracy. The government responds there was sufficient evidence to convict Suanette of conspiring to traffic marijuana from Lopez's and Vega's testimony. The government says their testimony shows she was directly involved in dealing drugs and helping Carlitos and Vega with their drug sales. In our view, the government has the better argument. Two witnesses testified Suanette either resupplied or directly sold marijuana to them at one of the organization's drug hubs, that sometimes she was on her own, and sometimes she was with Carlitos, who had also been charged with the conspiracy to traffic drugs.

Suanette also makes a broad argument that the testimony from one CW contradicted the other because one testified she resupplied him with baggies of marijuana to sell and the other CW testified she did not resupply him, but she did sell directly to him either on her own or when she was with Carlitos. Suanette's argument doesn't help convince us there was insufficient evidence. When we view the testimony in the light most favorable to the prosecution (as we must, see Chan, 981 F.3d at 51), a rational jury could have easily concluded each CW simply had different interactions and experiences [**98] with her. CW Lopez and CW Vega observed her actions from their respective roles and positions within the organization. Each of their testimonies, on their own, could have been sufficient to convict her because they both observed her engage in the sale of marijuana: she delivered the inventory of marijuana for CW Vega to sell a few times a week, and she sold marijuana to CW Lopez by collecting the money while her husband handed the drugs to him.

Suanette also protests that "[m]ere association with a conspirator is not enough to prove beyond a reasonable doubt that [she] is also a co-conspirator." True, but CW Lopez's and CW Vega's testimony goes beyond mere association. Each of **[*53]** these witnesses testified that she either handed marijuana to them or a coconspirator standing nearby or took money from them while her husband handed the marijuana over to them. Their testimony demonstrates she purposefully and willingly interacted with them. There is, therefore, sufficient evidence to sustain her conviction for the drug distribution conspiracy. See Acosta-Colon, 741 F.3d at 190-91.

Aiding and abetting distribution of marijuana

Suanette states in her brief that there was insufficient evidence to convict her of aiding and abetting [**99] the distribution of marijuana but her entire argument seems to focus on her insistence that there was insufficient evidence to sustain her conviction for the conspiracy count. Giving her the benefit of the doubt, we briefly state that there certainly was sufficient evidence to find her guilty beyond a reasonable doubt of the aiding and abetting charge. The government argues the same evidence that convicted her of the conspiracy count is sufficient to prove beyond a reasonable doubt that she aided and abetted the distribution of marijuana. We agree.

HN42 To convict Suanette of aiding and abetting in the distribution of marijuana, the government needed to prove she "'associated h[er]self with the venture,' 'participated in [the venture] as something that [s]he wished to bring about,' and that [s]he 'sought by [her] actions to make the venture succeed.'" United States v. Monteiro, 871 F.3d 99, 109 (1st Cir. 2017) (quoting Negrón-Sostre, 790 F.3d at 311). The testimony from CW Lopez and CW Vega clearly shows she was more than merely present for the interactions they had with her; she actively engaged in the distribution of marijuana when she resupplied CW Vega four times a week at the same time on each of those days and participated in the sale of marijuana to CW Lopez when she [**100] took the money he tendered when he bought from her and Carlitos. Cf. Negrón-Sostre, 790 F.3d at 311-12 (mere presence is insufficient to prove aiding and abetting possession with intent to distribute). We affirm her conviction for aiding and abetting the distribution of marijuana and move on to Juan's arguments about the lack of evidence supporting his convictions.

Juan's convictions

The testimony about Juan's actions included CWs and law enforcement agents. CW Ferrer testified about his experiences at Los Claveles, a tower of apartments where he often spent time with his cousin, Julio Alexis, and watched his cousin

buy marijuana from the lobby. CW Ferrer also bought marijuana for others who were scared to go into this apartment building. Over time, CW Ferrer often helped during his cousin's shifts by giving customers the marijuana they bought while his cousin took the money. CW Ferrer testified he met Juan for the first time in January 2008, when he went to Juan's apartment with his cousin, who had just finished a shift and needed to do his "tally." (A tally, CW Ferrer explained, is when the seller returns the drug inventory he or she did not sell during a shift back to the runner along with the money collected from [**101] sales throughout the shift.) CW Ferrer watched his cousin record the number of baggies of marijuana and cocaine, vials of crack, and aluminum folds of heroin.

CW Ferrer also testified that he went to Villa Margarita in the summer of 2008 with his cousin when Juan asked the cousin to take the tally there. When CW Ferrer and his cousin arrived at Villa Margarita, Joel called Juan using the walkie-talkie function on a cell phone to find out why Juan had not brought the tally over himself. **[*54]** CW Ferrer testified the tally his cousin handed to Joel included money, marijuana, cocaine, crack vials, and aluminum packets of heroin. CW Ferrer went back to Villa Margarita another time with his cousin, again on Juan's request.

CW Vega also testified about Juan's actions. When Vega was working for the enterprise as a lookout at Villa Margarita in May 2008, he saw Juan several times. On one occasion, other members of the enterprise handed Juan packages of heroin, marijuana, and crack cocaine, which Juan placed in the seat of the motorcycle he had arrived on before riding off in the direction of Los Claveles. CW Vega also saw Juan at Los Claveles when Vega was there to buy drugs. CW Vega testified he [**102] watched Juan get off an elevator and ask the man from whom CW Vega was buying to give him (Juan) the tally; the seller gave Juan money and Juan gave the seller a package with vials of crack.

Members of law enforcement also testified about Juan's actions. When Agent Evette Berrios Torres went to Villa Margarita in July 2008 as part of her investigation of drug trafficking and organized crime in that area, she observed Juan command the men he was with to cooperate with her and the other agents at the scene, leading by example when he walked up to her vehicle and placed his hands on the hood and ordering the others to do the same. According to Agent Berrios, they complied.

On appeal, Juan argues there was insufficient evidence to prove his guilt beyond a reasonable doubt and he identifies a lot of evidence against him as unreliable or not credible. He claims that the "main evidence" against him was CW Ferrer's testimony, which Juan brands as "[u]nreliable, uncorroborated, vague and scant." He also claims that CW Vega's testimony was vague and not credible. The government, for its part, argues that Juan's arguments boil down to his contention that the testimony of the CWs should not have [**103] been believed. We won't spend a boat load of time here examining Juan's claims because ***HN43*** a defendant cannot win a sufficiency-of-the-evidence challenge by claiming (as Juan does) the witnesses against him were not credible. Our framework for reviewing this kind of challenge means we give the government the benefit of the doubt and resolve any questions of witness credibility against the defendant. United States v. Cruz-Ramos, 987 F.3d 27, 38 (1st Cir. 2021); United States v. Manor, 633 F.3d 11, 13 (1st Cir. 2011).

The government says there was sufficient evidence to convict Juan of conspiracy because it showed he was running the Los Claveles drug point for the drug trafficking organization. The government also argues that there was sufficient evidence to convict Juan of aiding and abetting drug trafficking because there was much eyewitness testimony that he managed the sale of several types of drugs from the Los Claveles drug point along with Joel and other members of the organization.

HN44 To the extent Juan is arguing that CW Ferrer's testimony was insufficient because it was uncorroborated, we can also head this off immediately because it is well-settled that "[t]estimony from even just one witness can support a conviction." Negrón-Sostre, 790 F.3d at 307 (quoting United States v. Alejandro-Montañez, 778 F.3d 352, 357 (1st Cir. 2015)). There was sufficient evidence on CW Ferrer's testimony alone to [**104] uphold Juan's conspiracy and aiding-and-abetting-the-distribution convictions. But more than one witness testified about Juan's involvement with the drug trafficking organization; CW Vega also testified about two specific instances of watching Juan receive packages of drugs or money in direct exchange for a package of drugs and Agent Berrios **[*55]** watched several men fall into line when Juan clearly had authority to tell them what to do when she and her agents met them at Villa Margarita.

The testimony also demonstrates there was sufficient evidence to convict Juan of the conspiracy count because Juan clearly "knew about and voluntarily participated in the conspiracy, 'intending to commit the underlying substantive offense.'" Acosta-Colon, 741 F.3d at 190 (quoting De Jesus, 230 F.3d at 5). The testimony summarized above also demonstrates there was sufficient evidence to convict Juan of the four aiding and abetting counts because Juan clearly "'associated himself with the venture,' 'participated in [the venture] as something that he wished to bring about,' and 'sought by his actions to make the venture succeed.'" Monteiro, 871 F.3d at 109 (brackets in original) (quoting Negrón-Sostre, 790 F.3d at 311). 36

Juan's convictions affirmed, we move on to the sentencing issues.

SENTENCING [105]**

Joel, Carlos, Juan, and Idalia all challenge the methods the trial judge used to calculate the drug quantities attributable to each of them when she determined their individual guidelines sentencing ranges ("GSRs") before imposing their individual sentences. Before tackling their respective arguments, we provide some basic sentencing principles which govern the way we consider their arguments.

HN45 Our overall task when we examine a sentence or, as here, the sentencing process, is to consider whether the sentence is reasonable. Typically, our reasonableness review "is bifurcated, requiring us to ensure that the sentence is both procedurally and substantively reasonable." United States v. Arsenault, 833 F.3d 24, 28 (1st Cir. 2016) (citing United States v. Mendez, 802 F.3d 93, 97 (1st Cir. 2015)). "We ordinarily review both procedural and substantive reasonableness [arguments] under a deferential abuse-of-discretion standard." Id. (citing United States v. Maisonet-Gonzalez, 785 F.3d 757, 762 (1st Cir. 2015), cert. denied sub nom. Maisonet v. United States, 577 U.S. 906, 136 S. Ct. 263, 193 L. Ed. 2d 194 (2015)).

HN46 "However, when assessing procedural reasonableness, this [c]ourt engages in a multifaceted abuse-of-discretion **[*56]** standard whereby 'we afford de novo review to the sentencing court's interpretation and application of the sentencing guidelines, [examine] the court's factfinding for clear error, and evaluate its judgment calls for abuse of discretion.'" [**106] Id. (quoting United States v. Ruiz-Huertas, 792 F.3d 223, 226 (1st Cir. 2015)). "And we will find an abuse of discretion only when left with a definite conviction that 'no reasonable person could agree with the judge's decision.'" McCullock, 991 F.3d at 317 (quoting Cruz-Ramos, 987 F.3d at 41). One of the ways in which a district court can commit a procedural error in sentencing is to improperly calculate the GSR. United States v. Lee, 892 F.3d 488, 491 (1st Cir. 2018).

Drug Quantity

(Joel & Carlos)

Joel and Carlos 37 both challenge the trial judge's findings of the drug quantities she used to calculate their GSR and determine their respective sentences. Before delving into the arguments, we lay the groundwork for our review by summarizing Joel's and Carlos's objections and motions leading up to their sentencing hearings.

The presentencing report ("PSR") suggested a finding of 25,446.49 kg of marijuana for the three-year conspiracy (after converting the suggested quantities of the other drugs at play as instructed in U.S.S.G. § 2D1.1, App. Note 8(D)). Before his sentencing hearing, Carlos filed an objection to the drug quantity included in the PSR, arguing this quantity was based on unreliable testimony from CW Vega. According to Carlos, CW Vega testified to different drug amounts during cross-examination than he did during his direct testimony. Carlos also argued that CW Vega's testimony [**107] regarding drug quantities only covered a portion of the three-year conspiracy and that Vega couldn't provide accurate quantities because his role shifted throughout the conspiracy from lookout to seller, meaning his testimony about quantities couldn't be extrapolated to calculate the total quantity for the entire three-year timespan of the charged conspiracy. Joel, for his part, also filed an objection to his own amended PSR, expressly adopting Carlos's arguments regarding extrapolation from CW Vega's testimony.

The trial judge overruled both objections, finding CW Vega's testimony reliable on the whole despite the occasional discrepancies in precise amounts. Addressing Carlos's and Joel's objections to using this testimony to extrapolate the total quantity for the length of the conspiracy, the judge stated the probation office used drug quantities from all four CWs and plausibly extrapolated from the testimonies to provide a conservative total quantity for sentencing purposes.

At the subsequent sentencing hearings, the judge attributed 25,446.49 kg of marijuana **[*57]** to Joel and to Carlos. 38 For Carlos, the judge calculated a total offense level of 41 with a criminal history category ("CHC") [**108] of I for a GSR of 324 to 405 months and ultimately sentenced him to 324 months. For Joel, the judge calculated a total offense level of 42 with a CHC of II for a GSR of 360 months to life and ultimately sentenced him to 360 months. 39

On appeal, Joel and Carlos continue to press their argument that the only evidence of the drug quantities sold was testimony from CW Vega who, they say, did not provide reliable testimony because, throughout his testimony, he was inconsistent about how much he typically sold each shift he worked. Both also insist that the other CWs did not provide daily sales figures. Both appellants rely on United States v. Rivera-Maldonado, where we warned that "[t]he potential for grave error where one conclusory estimate serves as the multiplier for another . . . may undermine the reasonable reliability essential to a fair sentencing system." 194 F.3d 224, 233 (1st Cir. 1999) (remanding for resentencing because

the drug quantity used to determine the base offense level was based on a pyramid of unreliable inferences). Carlos specifically argues that the trial judge's calculation of the drug quantity by multiplying small amounts seized across dozens of days of investigations in order to reach a daily [**109] sales figure is the kind of grave error we warned about in Rivera-Maldonado.

The government responds that the judge used a reasoned estimate of the drug quantity attributable to Joel and Carlos when she adopted the PSR's calculations because the probation office's calculation, while largely informed by CW Vega's testimony, was corroborated by other CWs' testimony regarding sales volumes. The government points out that, even if CW Vega's testimony had been entirely consistent between direct and cross-examination, the probation office's calculations of drug quantity were below the lowest quantity to which he testified. The government also emphasizes that the quantities calculated in the PSRs were conservative in other ways too, such as using only the estimated quantities of drugs sold at Villa Margarita and not adding quantities from sales at Los Claveles, considering the two-shift selling operation at Villa Margarita (as opposed to a single shift) as starting later in time than the testimony supported, halving the quantities sold during the day vs. night shifts, and using only sales figures for "slow" days (rather than the higher quantities supported by the testimonies for "busy" days). [**110]

HN47 "When making a drug quantity finding, the sentencing court's responsibility is to 'make reasonable estimates of drug quantities, provided they are supported by a preponderance of the evidence.'" Lee, 892 F.3d at 491 (quoting United States v. Mills, 710 F.3d 5, 15 (1st Cir. 2013)). "We review those estimates 'deferentially, reversing only for clear error.'" Id. (quoting Mills, 710 F.3d at 15). "We will only find clear error when our review of the whole record 'forms a strong, unyielding belief that a mistake has been made.'" Id. at 491-92 (alteration adopted) **[*58]** (quoting Cumpiano v. Banco Santander P.R., 902 F.2d 148, 152 (1st Cir. 1990)).

HN48 A defendant who is convicted of conspiracy to distribute controlled substances will be held responsible "not only for the drugs he actually handled but also for the full amount of drugs that he could reasonably have anticipated would be within the ambit of the conspiracy." United States v. Correa-Alicea, 585 F.3d 484, 489 (1st Cir. 2009) (quoting United States v. Santos, 357 F.3d 136, 140 (1st Cir. 2004)). Although the court "may rely on reasonable estimates and averages" to reach "its drug-quantity determinations", those estimates must possess "adequate indicia of reliability" and "demonstrate record support," Rivera-Maldonado, 194 F.3d at 228 (internal citations omitted); a "hunch or intuition" won't cut it, Correa-Alicea, 585 F.3d at 489 (quoting Marrero-Ortiz, 160 F.3d at 780). When we review the district court's factual finding as to drug quantity for clear error, we are looking for "whether the government presented sufficient reliable [**111] information to permit the court reasonably to conclude that [the appellants were] responsible for a quantity of drugs at least equal to the quantity threshold for the assigned base offense level." Correa-Alicea, 585 F.3d at 489 (quoting United States v. Barnett, 989 F.2d 546, 553 (1st Cir. 1993)). We have previously recognized that "an estimate of drug quantity may be unreliable if based on an extrapolation from too small a sample." Id. (citing Rivera-Maldonado, 194 F.3d at 231 (holding a dozen controlled buys over a six-month period was not sufficiently reliable for estimating the overall drug quantity)).

The drug quantity the trial judge used to determine the applicable base offense level for Joel and Carlos was based on much more than a small sample of drugs seized by the government. The CWs testified at length about the operational details of their drug trafficking organization, including where the drugs were sold and how the sellers were organized first in one day shift but eventually evolved into a 24-hour operation with a day shift and a night shift. CW Vega testified in detail about how much he sold on each day of the week, depending on the time of day. While he did not testify to the same exact quantities when cross-examined, he provided the same general quantity range and, as the government points [**112] out, the PSR explicitly explains how it included conservative estimates for the length of time the sales were made 24 hours/day as opposed to 12 hours/day and the quantity of each drug sold per day.

The extrapolation of the drug quantities attributable to the entire length of the conspiracy was clearly based on information from CW Vega and informed by the testimony from other CWs as well as testimony from the government's experts, and we have no concerns that there are any grave errors in the calculation of the total quantity attributed to the conspirators. See Rivera-Maldonado, 194 F.3d at 233. In our opinion, the judge's drug quantity finding was based on sufficiently reliable information and we have no reason to believe a mistake or clear error was made in the calculation of the total drug quantity. See Correa-Alicea, 585 F.3d at 489.

Juan

Juan raises different arguments than Joel and Carlos in his challenge to his 235-month sentence. 40 Prior to the sentencing **[*59]** hearing, Juan asserted he should only be held responsible for the drug sales at Los Claveles and not the sales at Villa Margarita because, according to him, there was no evidence linking him to Villa Margarita. He also asserted that there was no way for the court to determine the drug quantity [**113] for purposes of calculating his sentence because there was no testimony at trial about the quantity of the drugs sold at Los Claveles. During his

sentencing hearing, Juan relied on the written memorandum he'd already filed. The government argued the evidence at trial revealed Juan was a high-level runner for the organization who was clearly instructing other members of the conspiracy about where to go and what to sell, and that the Los Claveles and Villa Margarita drug points were part of the same operation with the same main operators, including Juan. On appeal, Juan contends his sentence was unreasonable for the same reasons he articulated in his sentencing memorandum.

HN49 As we previously stated, we review preserved sentencing arguments for abuse of discretion, reviewing the findings of fact for clear error and any conclusion regarding the governing sentencing laws de novo. Arsenault, 833 F.3d at 28. Juan argues that his sentence is procedurally unreasonable because the judge used the drug quantity evidence from sales at the "curve" to calculate his sentence. Juan says this evidence doesn't reflect his personal involvement in the conspiracy because he had allegedly worked as a runner at Los Claveles, not at [**114] the "curve," so the quantities for drug sales at the "curve" were not attributable to him in the absence of evidence connecting him to drug trafficking at the "curve."

HN50 Juan's right that "when a district court determines drug quantity for the purpose of sentencing a defendant convicted of participating in a drug trafficking conspiracy, the court is required to make an individualized finding as to drug amounts attributable to, or foreseeable by, that defendant." United States v. Colon-Solis, 354 F.3d 101, 103 (1st Cir. 2004). But this is not the same thing as requiring that "the defendant must have personally handled the drugs for which he is held responsible," which we don't. Id. at 103 n.2 (citing U.S.S.G. § 1B1.3). "A defendant may be held responsible for drugs involved in his 'relevant conduct' [and] 'such conduct may include a defendant's own acts or the acts of others.'" Id. (first quoting U.S.S.G. § 1B1.3, then quoting United States v. Laboy, 351 F.3d 578, 578 (1st Cir. 2003)).

As the government points out, ***HN51*** in a drug conspiracy, the quantities of drugs sold by others operating within the enterprise are attributable to a defendant as long as the sales were a reasonably foreseeable consequence of the enterprise. United States v. Ramírez-Negrón, 751 F.3d 42, 53 (1st Cir. 2014) ("A defendant may be held responsible only for drug quantities 'foreseeable to [that] individual.'" (quoting United States v. Correy, 570 F.3d 373, 380 (1st Cir. 2009))). "Foreseeability encompasses [**115] 'not only . . . the drugs the defendant actually handled but also . . . the full amount of drugs that he could reasonably have anticipated would be within the ambit of the conspiracy.'" Id. (brackets omitted) (quoting Santos, 357 F.3d at 140).

Both the Villa Margarita and Los Claveles drug points were part of the single conspiracy for which Juan was charged and convicted; as summarized supra when we reviewed Juan's challenge to the sufficiency **[*60]** of the evidence to support his convictions, there was testimony to support Juan's movements and actions at and between both locations. It was therefore reasonably foreseeable that, while Juan primarily worked at Los Claveles, the sales at Villa Margarita would be both attributable and attributed to him. The trial judge did not abuse her discretion by using the drug quantities calculated from the sales at Villa Margarita when she calculated and imposed Juan's sentence. 41

Idalia

Idalia challenges the trial judge's attribution of her husband's crack sales to her. The evidence at trial showed Idalia directly sold vials of crack from her home, and at times completed the sales transactions when a customer was looking for her husband, Carlos. Idalia was sentenced to sixty [**116] months for her one count of conviction for aiding and abetting the possession with intent to distribute fifty grams or more of crack within 1,000 feet of a protected facility.

Prior to her sentencing hearing, Idalia successfully challenged the PSR's recommendation that the court calculate her GSR using the amount of crack attributable to the entire conspiracy. The trial judge sustained her objection to the extent Idalia had not been convicted of the conspiracy charge but found the estimated amount of crack sold to CW Vega by Carlos was properly attributable to Idalia because her one count of conviction included aiding and abetting the distribution of crack cocaine. At the sentencing hearing, Idalia pressed her objection to the inclusion of the crack sold by Carlos in the court's finding of the amount of crack for which she was held responsible for sentencing purposes. She argued there was no indication CW Vega had bought crack from both her and Carlos at the same time -- always from either one or the other when the other was not present. In response, the trial judge noted CW Vega's testimony that he first bought from Idalia after she emerged from the house she shared with Carlos in [**117] response to Vega calling for Carlos and that he always bought from Carlos and Idalia from the yard of their house. The judge relied on U.S.S.G. § 1B1.3, which provides the relevant conduct for the determination of the GSR. See Sections 1B1.1, 1B1.2(b). Idalia was on the hook for:

> (1)(A) all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant; and

(B) in the case of a jointly undertaken criminal activity (a criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy), all acts and omissions of others that were--

(i) within the scope of the jointly undertaken criminal activity,

(ii) in furtherance of that criminal activity, and

(iii) reasonably foreseeable in connection with that criminal activity;

that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense[.]

Section 1B1.3.

On appeal, Idalia continues her battle against the calculation of her GSR including **[*61]** the sales by Carlos to CW Vega during the time in which she also sold crack to Vega. She argues that her sentence is [**118] unreasonable as a result of this attribution, especially because the trial judge rounded up to two months of Carlos's sales to her when CW Vega's testimony indicated she might have only sold to him during a one-month period. The round up, according to Idalia, constitutes clear error on the part of the judge. The government responds that CW Vega's testimony reflected a two-month purchasing timeframe and argues that, as a matter of law, Carlos's sales to Vega during these two months were properly included in the total quantity attributed to Idalia for the purpose of calculating her GSR.

HN52 As we have previously stated, "[t]he district court's finding as to the amount of drugs reasonably foreseeable to [a defendant] need only be supported by a preponderance of the evidence and need not be exact so long as the approximation represents a reasoned estimate." United States v. Ortiz-Torres, 449 F.3d 61, 79 (1st Cir. 2006) (citing Santos, 357 F.3d at 141). In addition, "[w]e will set aside a drug-quantity calculation only if clearly erroneous; if there are two reasonable views of the record, the district court's choice between the two cannot be considered clearly erroneous." Id. (citing Santos, 357 F.3d at 141).

Idalia, quoting United States v. Ortiz, 966 F.2d 707, 712 (1st Cir. 1992), points out that "the line that separates mere presence from culpable presence [**119] is a thin one, often difficult to plot." ***HN53*** Indeed, we have also stated that "mere association between the principal and those accused of aiding and abetting is not sufficient to establish guilt; nor is mere presence at the scene and knowledge that a crime was to be committed sufficient to establish aiding and abetting." Id. (alteration adopted) (quoting United States v. Francomano, 554 F.2d 483, 486 (1st Cir. 1977)). However, these statements of black letter law related to the substantive charge of aiding and abetting won't help her here. There is no doubt she was on the hook for the crack sold by her partner at the same location and to the same person when it came to determining a reasonable sentence to impose for her aiding and abetting conviction. See U.S.S.G. § 1B1.3. The sentencing guidelines are clear, so the trial judge was not wrong to include Carlos's crack sales to CW Vega during the time period the latter identified as also buying crack from Idalia when the trial judge calculated the total drug quantity attributable to Idalia.

Turning our attention to Idalia's argument that the trial judge clearly erred by using a two-month period to estimate the total quantity of crack attributable to Idalia for sentencing purposes, the government points out that Idalia [**120] did not specifically challenge the one- vs. two-month period during the sentencing proceedings. Because her challenge to the manner in which the trial judge calculated the total drug quantity attributable to her is well-preserved, we'll give her the benefit of the doubt about the preservation of this argument here for our review.

CW Vega first testified he bought crack from Idalia and Carlos for "a short while" starting in June 2006. When pressed by the prosecutor to be more specific about the time, he said "I would go to the drug point daily, so I would say about a month, two months" for a total of fifteen times after the first time he bought vials of crack from Idalia on the front porch. CW Vega also testified that he bought orange-capped vials of crack cocaine from Carlos -- in the yard of Carlos's house -- during "the same time of the two months" as when he bought from Idalia -- from the porch of the same house. The trial judge's **[*62]** decision to use the two-month period for calculating the GSR was not wrong, never mind clearly wrong, because this time period and subsequent estimated quantity was supported by a preponderance of the evidence. See Ortiz-Torres, 449 F.3d at 79. Idalia's challenge to the procedural [**121] reasonableness of her sentence therefore fails.

Crack:Powder

(Carlos)

In addition to his drug quantity argument, Carlos also challenges the district court's denial of his request that it use a 1:1 ratio for crack cocaine:powder cocaine instead of the 18:1 ratio provided in the drug equivalency table in the 2016 U.S. Sentencing Guidelines, § 2D1.1, App. Note 8(D).[42] The trial judge denied Carlos's motion because she was not convinced the ratio should be reduced at all in light of the § 3553 factors and "objectives of sentencing policy." Before us, Carlos argues the judge should have used her discretion to apply a 1:1 ratio because the use of the smaller ratio would have had a big impact on his GSR and, according to him, there is increasing support for courts to vary from the 18:1 ratio in the guidelines. Carlos also says the trial judge did not give an adequate explanation for her refusal to use the requested 1:1 ratio.[43] The government responds that the trial judge did indeed provide her reasons for denying Carlos's motion and was not required to vary from the ratio provided in the guidelines. We agree and explain below why we leave Carlos's sentence as we have found it.

HN54 As part of the trial court's wide discretion in sentencing, the Supreme Court [**122] has acknowledged the "district courts' authority to vary from the crack cocaine Guidelines based on policy disagreement with them, and not simply based on an individualized determination that they yield an excessive sentence in a particular case." Spears v. United States, 555 U.S. 261, 264, 129 S. Ct. 840, 172 L. Ed. 2d 596 (2009) (emphasis in original). Despite Carlos's insistence that the judge should have used a 1:1 ratio when determining the total drug quantity here, there is no question that the judge had the discretion to stick to the 18:1 ratio in the guidelines and did not abuse her discretion by deciding not to vary from the applicable drug equivalency table. See id. While there is an acknowledged disparity in sentencing created by such a divergent conversion scheme for crack vs. powder cocaine, Dorsey v. United States, 567 U.S. 260, 266, 268, 132 S. Ct. 2321, 183 L. Ed. 2d 250 (2012), we need not and do not get into that policy controversy here, despite Carlos's invitation to follow a couple of district court judges who have chosen to vary from the drug equivalency ratios captured in the sentencing guidelines. The trial judge did not abuse her discretion when she denied Carlos's motion to use a 1:1 crack to powder cocaine ratio.

WRAP UP

For the reasons we stated and explained for each of the issues discussed above, we **[*63]** affirm all the defendants' [**123] convictions and sentences.

Footnotes

1 We have used the defendants' first names throughout this opinion because two of them (brothers) share the same last name and a third has a similar surname. We intend no disrespect to the defendants by using their first names and we only use them to make it clear as to whom we are referring as we work our way through their arguments before us.

2 A quick aside about our presentation of the testimony and evidence at trial as we trudge through the issues. Only Juan and Suanette challenge the sufficiency of the evidence to support their convictions, and we don't address those issues until after we have worked through others, including challenges to several evidentiary decisions made during trial. Our presentation of the facts will be in a neutral, "balanced fashion," except where otherwise specified, especially because "the precise manner in which we chronicle the backstory has no impact on our decision." United States v. Zimny, 846 F.3d 458, 460 n.2 (1st Cir. 2017) (citing United States v. Vázquez-Larrauri, 778 F.3d 276, 280 (1st Cir. 2015), and United States v. Rodríguez-Soler, 773 F.3d 289, 290 (1st Cir. 2014)). When we reach Juan's and Suanette's sufficiency-of-the-evidence arguments, we'll recite "our summary of the facts in the light most favorable to the jury's verdict." United States v. Chan, 981 F.3d 39, 45 (1st Cir. 2020) (citing United States v. Charriez-Rolón, 923 F.3d 45, 47 (1st Cir. 2019)).

3 If "tl;dr" isn't familiar, it stands for "Too Long; Didn't Read" which, as defined by Urban Dictionary, is "used by someone who wrote a large post[]/article/whatever to show a brief summary of their post as it might be too long." https://www.urbandictionary.com/define.php?term=tl%3Bdr, last visited June 28, 2021.

4 There was some mention of the Speedy Trial Act during the trial phase and Juan provides one paragraph summarizing the statute in his brief but, on appeal, the defendants' arguments focus exclusively on the constitutional rather than the statutory right to a speedy trial.

5 Below, Juan and Suanette joined Joel's motion to dismiss for violation of their constitutional speedy trial rights, but neither filed an objection to the R&R nor indicated he or she joined in Joel's objection. The R&R explicitly put them on notice that the failure to object within 14 days of the R&R would waive their right to appellate review. Therefore, despite Juan's cursory arguments here about this issue and Suanette's attempt to join the arguments on appeal, they have waived this issue. See United States v. Díaz-Rosado, 857 F.3d 89, 94 (1st Cir. 2017).

6 As we have mentioned in other opinions addressing a speedy trial violation argument, there is some debate about whether the abuse of discretion standard is the appropriate standard of review for this issue, but for various reasons it is the standard we have consistently applied. See Lara, 970 F.3d at 80; United States v. Irizarry-Colón, 848 F.3d 61, 68 (1st Cir. 2017). Here, the parties agree our review is governed by this standard, so we proceed with it once again.

7 A quick aside: Joel also tries to bring in the length of time that passed between the jury's verdict and his sentencing hearing. HN3 However, the Supreme Court has clearly stated the Sixth Amendment's guarantee to a speedy trial does not "apply to the sentencing phase of a criminal prosecution[.]" Betterman v. Montana, 136 S. Ct. 1609, 1612, 194 L. Ed. 2d 723 (2016) ("[O]nce a defendant has been found guilty at trial or has pleaded guilty to criminal charges[,]" the guarantee doesn't apply).

8 HN4 "The length of pretrial delay is calculated from either arrest or indictment, whichever occurs first." United States v. Casas, 425 F.3d 23, 33 (1st Cir. 2005).

9 As the government points out, Joel did not identify how the conditions at the prison were inhumane for him, in particular because he didn't articulate any reasons specific to him, pointing instead to a newspaper article about the general conditions at the prison.

10 The government generously opines Carlos asserted this claim when he replied to codefendant Suanette's motion in the summer of 2015 requesting the eight-week trial recess. But a review of Carlos's response reveals he presented no such objection. Instead, Carlos only argued the court should reconsider his detention status and allow him bond during the break because the length of time he had been detained since his arraignment (72 months) violated his speedy trial rights. The trial judge denied the bond request. It is clear the judge understood Carlos to be making a speedy trial motion because she responded to it by distributing a table reflecting the calendar days since the trial began when a full day of trial had not occurred and the reasons why trial had not been held -- or held for only half a day -- on any given day. The reasons ranged from illness on the part of a juror, an attorney, and a defendant, to scheduling conflicts across the board. The trial judge noted that none of the defendants had objected to the trial interruptions as they occurred and reiterated her speedy trial conclusion from the earlier motion -- "[d]efendants cannot trigger excludable delays during the pretrial stage [referring to the pretrial motions] and simultaneously log them as speedy trial violations."

11 Moreover, it is unclear how Carlos considers the trial judge to have erred because, on appeal, he challenges neither the denial of his request for bond nor the judge's response to his speedy trial violation assertion based solely on the length of the trial. To be sure, the trial in this case was protracted and, as Carlos points out, there are many disadvantages to a criminal trial spreading over such a long period. However, as the trial judge pointed out, there were myriad reasons why the trial took so long.

12 The judge found there was no evidence the law enforcement agents had exercised physical force and that Joel had conceded the gun was in plain view when the police opened the unlocked door. Regardless, the judge concluded the police had probable cause to search based on Joel's behavior from the first wail of the siren through to the seizure of the gun.

13 We may consider this testimonial evidence from the trial because Joel renewed his suppression motion. See United States v. Howard, 687 F.3d 13, 17 (1st Cir. 2012); United States v. de Jesus-Rios, 990 F.2d 672, 675 n.2 (1st Cir. 1993).

14 For the first time on appeal, Joel argues -- spilling lots of ink -- that Officer Ortiz lacked probable cause to stop him because the supposed tip from an informant that the organization's leaders met at a specific location each Thursday flunked the long-established standards for reliability and credibility for tips. Bypassing forfeiture and plain error review, we decline to address Joel's argument because, as the government correctly points out, the stop was justified by the tinted windows infraction.

15 Per "Spanish naming conventions, if a person has two surnames, the first (which is the father's last name) is primary and the second (which is the mother's maiden name) is subordinate." United States v. Martínez-Benítez, 914 F.3d 1, 2 n.1 (1st Cir. 2019).

16 We do not discern any argument on appeal challenging the trial judge's conclusion that the rough notes sought were not discoverable pursuant to the Jencks Act. We read Suanette's argument to focus entirely on the value of the rough notes as exculpatory and impeachment evidence. But we will soon get into the Jencks Act when we address Juan's arguments about rough notes from CW Ferrer's interviews below.

17 18 U.S.C. § 3500(b) provides that:

> After a witness called by the United States has testified on direct examination, the court shall, on motion of the defendant, order the United States to produce any statement (as hereinafter defined) of the witness in the possession of the United States which relates to the subject matter as to which the witness has testified. If the entire contents of any such statement relate to the subject matter of the testimony of the witness, the court shall order it to be delivered directly to the defendant for his examination and use.

Crucial for Juan's argument, however, is that ***HN17*** a statement is defined in § 3500(e)(1) in relevant part as "a written statement made by said witness and signed or otherwise adopted or approved by him." (Emphasis added.)

18 Juan's discussion of United States v. Blechman, an out-of-circuit case holding the trial court in that case erred by admitting online account records as a business record exception to the rule against hearsay, 657 F.3d 1052, 1056-58, 1066 (10th Cir. 2011), is not what persuades us there may have been error here. As the trial judge aptly distinguished in her order addressing Joel's request that she reconsider her ruling about the handwritten notes on the North Sight records, the district court in Blechman had admitted the documents as Federal Rule of Evidence 803(6) business records, whereas she acknowledged the double hearsay problem with the handwritten notes and did not admit them for that reason, but allowed the jury to see the notes for the expressly limited purpose she articulated.

19 Juan also makes a cursory statement that the trial judge erred by not allowing him to inquire about CW Vega's meetings with the prosecutors during his cross-examination of this witness and that this inquiry would have resulted in a successful impeachment of Vega's testimony. As the government points out, however, Juan's contention on this matter is waived for his failure to flesh out the argument. See Chan, 981 F.3d at 50 n.4 (citing Rodríguez v. Mun. of San Juan, 659 F.3d 168, 175 (1st Cir. 2011) (***HN22*** "[W]e deem waived claims not made or claims adverted to in a cursory fashion, unaccompanied by developed argument.")). And as we have just written, the trial judge did not abuse her discretion when she did not allow this line of inquiry during the defendants' respective cross-examinations of this witness.

20 The trial judge did sustain several objections during cross-examination and re-cross-examination about the details of other possible drug points at or around Los Claveles as beyond the scope of the direct or re-direct examination and such is a valid reason to sustain the objection. See United States v. Weekes, 611 F.3d 68, 70

(1st Cir. 2010) (Souter, J.) (holding no abuse of discretion when defendant was not allowed to cross-examine a witness about a matter outside the scope of the witness's direct testimony but other witnesses were questioned about that matter); United States v. Kenrick, 221 F.3d 19, 33 (1st Cir. 2000) (en banc) (acknowledging district court's "'extensive discretion' in controlling re-cross-examination"), abrogated on other grounds by Loughrin v. United States, 573 U.S. 351, 134 S. Ct. 2384, 189 L. Ed. 2d 411 (2014).

21 Juan tries to carve a space for his excluded witnesses by arguing that the truthfulness of CW Ferrer's statement regarding his "legal job" became a legitimate issue to explore as soon as CW Ferrer testified on direct, in response to the government's questions, to this employment history. The government, however, eliminates that space when it points out that CW Ferrer stated he paid for his drugs by selling drugs and holding a "legal job" but that the prosecutor did not ask any follow-up questions about his "legal job," only his selling activity. The government states --and this is supported by the trial transcripts -- that CW Ferrer only stated details of these "legal jobs" after he was asked about them on cross-examination.

22 ***HN25*** Federal Rule of Evidence 403 says "[t]he court may exclude relevant evidence if its probative value is substantially outweighed by a danger of [among other reasons] needlessly presenting cumulative evidence."

23 In considering Carlos's argument here, we note Joel presents only conclusory arguments about the repetitive or cumulative nature of the bulk of the testimony at issue. He provides lists of transcript pages for the witnesses he asserts provided the cumulative testimony for each incident, but he doesn't describe how the various testimonies are repetitive to the point of substantially outweighing their probative value. He also does not refer us to any case precedent in which we found a Rule 403 error where a few witnesses have testified about the same event and the district court declined to strike or disallow the testimony.

24 The government suggests our review of the supposedly cumulative testimony about the shooting incident on the basketball court should be for plain error because Joel did not object to the various law enforcement agent testimonies regarding this incident on a Rule 403 basis. Because the trial judge recognized Joel's standing objection throughout the trial to repetitive or cumulative evidence and because we find no abuse of discretion in allowing each of the witnesses Joel mentions to testify about the events Joel raises here, we do not conduct a separate plain error analysis for the overruled objections during the testimony about the shooting incidents.

25 Carlos mentions the denial of due process in his broad summary of his arguments, asserting the bias of the trial judge and the lack of access to daily trial transcripts denied him due process, but he does not flesh out an argument about how his due process rights were implicated here. Similarly, Joel makes a one phrase claim that the "multiple errors" throughout the trial "deprived [him] of his constitutional due process right to a fair trial" but doesn't develop any argument about due process per se. Accordingly, our discussion in this section goes with their primary framing of this issue as whether either were denied a fair trial in any of the ways they argue to us.

26 The defendants add to this fair trial grievance list the variety of evidentiary challenges we have already discussed and rejected.

27 Joel, Carlos, and Juan also mention these jury notes in their briefs as part of their broader arguments about the ways in which they claim they were denied a fair trial, but other than asserting the trial judge failed to adequately inquire and/or examine the extent of the jurors' prejudice against them, they do not develop their argument as much as Idalia, so we focus on her take of this issue. In fact, Carlos and Juan do not provide any argument about why these notes or the trial judge's manner of addressing them should disturb the guilty verdicts against them, so they have waived this particular issue.

28 The government makes no waiver argument as to either note so we proceed to resolve these juror note issues on the merits.

29 Carlos states in his brief that he joins Joel's argument on this issue, but he does not provide any independent or additional argument. We pause for a moment to remind the defendants -- many of whom joined in various arguments by their codefendants -- that they cannot simply state a blanket intention to join another's argument and leave it at that. ***HN30*** Adoption by reference can be a risky move because it is well-known that it "cannot occur in a vacuum and the arguments must actually be transferable from the proponent's to the adopter's case." United States v. Brown, 669 F.3d 10, 16 n.5 (1st Cir. 2012) (citing Casas, 425 F.3d at 30 n.2). A statement of intention to join another's argument without providing any independent argument about the issue whatsoever will often result in waiver. See id.

Juan, for his part, includes this incident as part of a list of reasons why he did not receive a fair trial from an impartial jury but doesn't provide any developed argument around this incident in particular.

Both Carlos and Juan have therefore waived this particular issue. See id.; Chan, 981 F.3d at 50 n.4.

30 Idalia also mentions, in a footnote, the defendants' collective request for a mistrial after members of the jury saw the defendants in handcuffs, which the trial judge denied. Idalia does not make any argument that the denial of the motion for mistrial was in error, so we will not undertake a review of this ruling on her behalf. Juan, for his part, also lumps these events into his list of reasons why he did not receive a fair trial from an impartial jury but once again doesn't provide any developed argument around this incident in particular.

31 ***HN32*** To be sure, "[c]are should be taken whenever reasonably possible to prevent the jurors from viewing a defendant handcuffed while the defendant is on trial. In the absence of a showing of prejudice, however, a fleeting glance by jurors of a defendant outside the courtroom in handcuffs does not justify a new trial." Ayres, 725 F.2d at 813.

32 There are two more "unfair trial" arguments to bring to the reader's attention, each relegated to this footnote because neither is sufficiently developed for our review. First, Carlos says he was unfairly disadvantaged during trial by not having access to daily trial transcripts. He asserts the trial might have been shorter if he and his codefendants had access to daily transcripts because the length of the bench conferences and arguments over specific testimony would have been shorter if they had been able to consult the transcripts of the testimony they were arguing over. During the trial, the judge granted a motion filed by Suanette -- joined by Carlos and other defendants -- for access to the transcripts the government had already ordered. Carlos asserts she gave him and his codefendants a hard time about their request for transcripts but there is no indication in the briefing or the discussion about Suanette's motion that the trial judge denied a request for daily transcripts. And Carlos acknowledges that indigent defendants are not automatically entitled to free daily transcripts. See 18 U.S.C. § 3006A. Instead, Carlos states that, in order to mount an "adequate defense," daily transcripts should be one of the entitlements included within a defendant's constitutional rights. In the absence of a developed record or argument, however, all we can do is acknowledge this was one of the ways in which Carlos says there were cumulative errors in his trial requiring reversal and a combination of errors depriving him of a fair trial.

Second, Juan mentions "inhumane conditions" several times throughout the factual and procedural summary in his brief, mentioning the times he was feeling ill or was sleep deprived or had inadequate food, but he does not tie these claims to any of his arguments about how he was denied a fair trial or how or why these events would be a reason to vacate his convictions or warrant a new trial. Carlos, in his brief, states that he "adopts" Juan's claims about "the documented and debilitating conditions of confinement" but also does not develop any argument on this topic. As the government asserts in response, these claims are therefore waived. See Chan, 981 F.3d at 50 n.4.

33 We would usually tackle the sufficiency-of-the-evidence arguments at the front end of our opinion because successful sufficiency challenges have double jeopardy implications, see Montijo-Maysonet, 974 F.3d at 41, but we cover these claims of error here in chronological order to the phase in which the trial judge ruled on these motions because only two of the five defendants raised these arguments before us and because we affirm the trial judge's denial of the motions for judgments of acquittal.

34 A quick reminder that we are now reciting "our summary of the facts in the light most favorable to the jury's verdict." Chan, 981 F.3d at 45 (citing Charriez-Rolón, 923 F.3d at 47).

35 Other folks add additional responsibilities to this "runner" job description, as we'll touch on later.

36 Juan does not address his count of conviction for conspiracy to possess a firearm in furtherance of a drug trafficking crime, so he has waived any argument about the sufficiency of the evidence for that crime. See, e.g., Cruz-Ramos, 987 F.3d at 35 n.5 (citing Rodríguez, 659 F.3d at 175).

Juan also provides a laundry list of other evidence from trial and asserts, without any supporting case law whatsoever, why these pieces of evidence cannot support his conviction. We decline to address these assertions because he did not provide any developed argument about them. See Chan, 981 F.3d at 50 n.4 (citing Rodríguez, 659 F.3d at 175 ("It should go without saying that we deem waived claims not made or claims adverted to in a cursory fashion, unaccompanied by developed argument."); Holloway v. United States, 845 F.3d 487, 491 n.4 (1st Cir. 2017) (stating an argument was waived when party failed to provide any legal citations to support its argument)).

Finally, Juan writes a few lines suggesting his drug-related convictions should be dismissed because the indictment specified the location of his activities as within 1,000 feet of a public housing authority but Los Claveles is private property outside the purview of 21 U.S.C. § 860(a). The indictment actually charges him and the others with distribution "within 1000 feet of a playground in Los Claveles Housing Project and in around the Villa Margarita Ward . . .," not a housing facility. Regardless, any argument or claim he intended to make on this basis is waived because it is perfunctory and undeveloped. See id.

37 Joel was sentenced to 360 months on each of the following four counts: conspiracy to distribute narcotics, aiding and abetting the distribution of heroin, aiding and abetting the distribution of crack cocaine, and aiding and abetting the distribution of powder cocaine; 120 months on the count for aiding and abetting the distribution of marijuana; and 240 months on the count for conspiracy to possess a firearm in furtherance of a drug trafficking crime, all to be served concurrently. Carlos, who was also convicted of all six counts charged, was sentenced to 324 months on each of the following counts: conspiracy to distribute narcotics, and aiding and abetting the distribution of heroin, crack cocaine, and powder cocaine, respectively; 120 months on the count for aiding and abetting the distribution of marijuana, and 240 months on the count for conspiracy to possess a firearm in furtherance of a drug trafficking crime, all to be served concurrently.

38 This quantity was the total quantity estimated in each PSR as attributable to the three-year conspiracy after the various controlled substances were converted to equivalent marijuana quantities as instructed in U.S.S.G. § 2D1.1(c), App. note 8(D), for purposes of determining the base offense level.

39 Joel's counsel renewed the objection to the drug quantity during the sentencing hearing. Carlos's counsel did not lodge any additional objections during the sentencing hearing.

40 Juan was sentenced to 235 months on his convictions for conspiracy to distribute narcotics, conspiracy to possess a firearm in furtherance of a drug trafficking crime, and aiding and abetting the distribution of powder cocaine, crack cocaine, and heroin. Juan was also sentenced to 120 months on his conviction for aiding and abetting the distribution of marijuana, to be served concurrently with the sentence for the other counts of conviction.

41 Juan also states that his sentence was substantively unreasonable because some of the similarly situated codefendants (including other alleged drug runners) received more lenient sentences. Other than listing some of these codefendants' names, alleged role in the conspiracy, and ultimate sentence, Juan doesn't develop this argument. It is therefore waived. See Chan, 981 F.3d at 50 n.4.

42 Pursuant to the drug equivalency table in the 2016 U.S.S.G. § 2D1.1, App. Note 8(D), the court is to convert 1 gram of cocaine base to 3,571 grams of marijuana but 1 gram of powder cocaine to 200 grams of marijuana when it calculates the total drug quantity attributable to a defendant. Herein lies the 18:1 ratio.

43 The government says Carlos has not preserved this argument for our review because Carlos's ratio-based arguments to the trial judge during the sentencing phase did not frame this issue in terms of procedural unreasonableness. We disagree and proceed with our standard abuse of discretion lens of review because we don't see a pivot in the framing of Carlos's argument in his brief before us.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA, Plaintiff, v. **[1] JOEL RIVERA-ALEJANDRO** **aka "J,"** **[COUNTS ONE THROUGH SEVEN]** **[2] CARLOS RIVERA-ALEJANDRO** **aka Homero,** **[COUNTS ONE THROUGH SEVEN]** **[3] ALEXIS RIVERA-ALEJANDRO** **aka "Alex," aka "Villa,"** **[COUNTS ONE THROUGH SEVEN]** **[4] ANGEL BETANCOURT-RIVERA,** **aka "Papo Piña," aka "Piña,"** **[COUNTS ONE THROUGH SEVEN]** **[5] ROBERTO C. FONTANEZ-VEGA** **aka "Robert Amistad," aka "Robert Lancer,"** **aka "Gordo," aka "Robert Oreja,"** **[COUNTS ONE THROUGH SEVEN]** **[6] ABIMAEL SERRANO-FIGUEROA** **aka "Abi,"** **[COUNTS ONE THROUGH SEVEN]** **[7] CARLOS E. RIVERA-RIVERA,** **aka "Carlitos," aka "Carlitos Nariz,"** **[COUNTS ONE THROUGH SEVEN]** **[8] ISMAEL RIVERA-MALDONADO** **aka "Jun Jun," aka "Junito,"** **[COUNTS ONE THROUGH SEVEN]** **[9] JOSE GARCIA-RODRIGUEZ** **aka "Juan," aka "Joe,"** **[COUNTS ONE THROUGH SEVEN]** **[10] CARLOS GONZALEZ-FRANCO** **aka "Carlitos," aka "Bocillo,"** **aka "Carlitos Bocillo,"** **[COUNTS ONE THROUGH FIVE & COUNT SEVEN]** **[11] NATANAEL RUIZ-ORTEGA** **aka "Nata,"** **[COUNTS ONE THROUGH SEVEN]** **[12] ANGEL LOPEZ-MALDONADO** **aka "Buby," aka "Oreja," aka "El Blanco,"** **[COUNTS ONE THROUGH SEVEN]**	**INDICTMENT** CRIMINAL NO. 09-165 (CC) **FILED UNDER SEAL** Violations: **(COUNT ONE)** Title 21, U.S.C., §§ 841(a)(1), (b)(1)(A), 846 and 860. **(COUNT TWO)** Title 21, U.S.C., §§ 841(a)(1), (b)(1)(A), and 860 and Title 18, U.S.C., § 2. **(COUNT THREE)** Title 21, U.S.C., §§ 841(a)(1), (b)(1)(A), and 860 and Title 18, U.S.C., § 2. **(COUNT FOUR)** Title 21, U.S.C., §§ 841(a)(1), (b)(1)(A) and 860 and Title 18, U.S.C., § 2. **(COUNT FIVE)** Title 21, U.S.C., §§ 841(a)(1), (b)(1)(A), and 860 and Title 18, U.S.C., § 2. **(COUNT SIX)** Title 18, U.S.C., §§ 924(c)(1) and 924(o). **(COUNT SEVEN)** Title 21, U.S.C., § 853 and Rule 32.2(a) of the Federal Rules of Criminal Procedure. **(SEVEN COUNTS)**

[13] JOSE RIVERA-SIERRA **aka "Rambo," aka "Jose A. Rivera-Rosario," aka "Jose Rivera-Serrano," aka "R,"** **[COUNTS ONE THROUGH SEVEN]** **[14] JUAN RIVERA-GEORGE** **aka "Tio,"** **[COUNTS ONE THROUGH SEVEN]** **[15] JULIO ALEXIS ORTIZ-BERRIOS** **aka "Alexis,"** **[COUNTS ONE THROUGH SEVEN]** **[16] CARLOS A. RIVERA-RIVERA** **aka "Benny"** **[COUNTS ONE THROUGH SEVEN]** **[17] MIGUEL ANGEL VEGA-DELGADO** **aka "Kiki," aka "Iki," aka "El Bizcochón,"** **[COUNTS ONE THROUGH FIVE & COUNT SEVEN]** **[18] VALERIE RIVERA-DEYA,** **aka "Valeria,"** **[COUNTS ONE THROUGH SEVEN]** **[19] SUANETTE GONZALEZ-RAMOS** **aka "Suei,"** **[COUNTS ONE THROUGH FIVE & COUNT SEVEN]** **[20] JOSE L. FIGUEROA-CAMILO** **aka "Chay,"** **[COUNTS ONE THROUGH FIVE & COUNT SEVEN]** **[21] ROSARIO RIVERA-GUZMAN,** **[COUNTS ONE THROUGH FIVE & COUNT SEVEN]** **[22] JAIME LOPEZ-CANALES** **aka "Jimmy,"** **[COUNTS ONE THROUGH FIVE & COUNT SEVEN]** **[23] JUAN GONZALEZ-RAMOS** **aka "Papito,"** **[COUNTS ONE THROUGH FIVE & COUNT SEVEN]** **[24] HECTOR RIVERA-BETANCOURT** **aka "Monchi,"** **[COUNTS ONE THROUGH SEVEN]** **[25] ANGEL LUIS BETANCOURT-ORTIZ** **aka "Luis," aka "Cano,"** **[COUNTS ONE THROUGH SEVEN]** **[26] RICARDO BETANCOURT-ORTIZ** **aka "Gordo," aka "Ricky,"** **[COUNTS ONE THROUGH SEVEN]**	

[27] JOSE LUIS DIAZ-FIGUEROA **aka "Cuñao,"** **[COUNTS ONE THROUGH SEVEN]** **[28] JUAN GARCIA-RODRIGUEZ** **aka "Jon Jon,"** **[COUNTS ONE THROUGH FIVE & COUNT SEVEN]** **[29] LUIS X. RIVERA-RIVERA** **aka "Jincho," aka Luis Michael," aka "Luis M.,"** **[COUNTS ONE THROUGH SEVEN]** **[30] JOSE TRINIDAD-PAGAN** **aka "Ojos Verdes,"** **[COUNTS ONE THROUGH SEVEN]** **[31] EDGARDO RUIZ-TORRES** **aka "Eggy,"** **[COUNTS ONE THROUGH SEVEN]** **[32] BIENVENIDO LOPEZ-CRUZ** **aka "Bienve,"** **[COUNTS ONE THROUGH FIVE & COUNT SEVEN]** **[33] JOSE E. PEÑA-MARTINEZ** **aka "Pepe,"** **[COUNTS ONE THROUGH FIVE & COUNT SEVEN]** **[34] RAUL TORRES-SANTANA** **aka "Negro," aka "Manota," aka "Bebo,"** **[COUNTS ONE THROUGH SEVEN]** **[35] DAVID A. BULTRON-FLORES** **aka "Negro,"** **[COUNTS ONE THROUGH FIVE & COUNT SEVEN]** **[36] LISBETH RODRIGUEZ-ECHEVARRIA** **aka "Karen Figueroa-Gallardua," aka "Choki,"** **[COUNTS ONE THROUGH SEVEN]** **[37] JORGE L. CRUZ-MALDONADO** **aka "Chichón,"** **[COUNTS ONE THROUGH SEVEN]** **[38] JOSE L. TORRES-AGOSTO,** **aka "Michael,"** **[COUNTS ONE THROUGH FIVE & COUNT SEVEN]** **[39] VICTOR CASTRO-RODRIGUEZ** **aka "Rockerito,"** **[COUNTS ONE THROUGH FIVE & COUNT SEVEN]**	

[40] OSVALDO PEREZ **aka "Ozzie,"** **[COUNTS ONE THROUGH SEVEN]** **[41] JUAN DOE #1**  **aka "Garnett," aka "Pichilingo,"** **[COUNTS ONE THROUGH FIVE & COUNT SEVEN]** **[42] ROBERTO BRUNO-DIAZ** **aka "Robertito," aka "Roberto El Flaco,"** **[COUNTS ONE THROUGH SEVEN]** **[43] LUIS E. SANCHEZ-ENCARNACION** **aka "Luisito,"** **[COUNTS ONE THROUGH SEVEN]** **[44] JONATHAN CARRASQUILLO-COLON** **aka "Jon," aka "Rogelio," aka "Jomo,"** **[COUNTS ONE THROUGH SEVEN]** **[45] NOEL RODRIGUEZ-ADORNO** **aka "Roncho," aka "Carlanga,"** **[COUNTS ONE THROUGH FIVE & COUNT SEVEN]** **[46] ADDIER ENCARNACION-CRUZ** **aka "Chango,"** **[COUNTS ONE THROUGH FIVE & COUNT SEVEN]** **[47] IDALIA MALDONADO-PEÑA,** **[COUNTS ONE THROUGH FIVE & COUNT SEVEN]** **[48] JAIME RIVERA NIEVES,** **[COUNTS ONE THROUGH FIVE & COUNT SEVEN]** **[49] DOLORES ALEJANDRO-RODRIGUEZ** **aka "Doña Lolita," aka "Lola,"** **[COUNTS ONE THROUGH SEVEN]** **[50] MANUEL ANTONIO FERRER-HADDOCK** **aka "Palma,"** **[COUNTS ONE THROUGH FIVE & COUNT SEVEN]** **[51] RUBEN DELGADO-MALDONADO** **aka "Bimbo,"** **[COUNTS ONE THROUGH SEVEN]**	

[52] MARLENIS CARRASQUILLO-QUIÑONES, [COUNTS ONE THROUGH FIVE & COUNT SEVEN] **[53] ANGEL LUIS RIVERA-RIVERA aka "Bebo," aka "Bobolón," [COUNTS ONE THROUGH FIVE & COUNT SEVEN]** **[54] HECTOR ORTIZ-MARQUEZ aka "Papito," [COUNTS ONE THROUGH SEVEN]** **[55] RAMON RODRIGUEZ-IDELFONSO aka "Mon," aka "Castor," [COUNTS ONE THROUGH FIVE & COUNT SEVEN]** Defendants.	

THE GRAND JURY CHARGES:

COUNT ONE
(Conspiracy to Distribute Narcotic Drug Controlled Substances)

From in or about 2006, the exact date being unknown to the Grand Jury, and continuing up to and until the date of the return of the instant indictment, in Trujillo Alto, the District of Puerto Rico, and elsewhere and within the jurisdiction of this Court,

[1] JOEL RIVERA-ALEJANDRO
aka "J,"
[2] CARLOS RIVERA-ALEJANDRO
aka Homero,
[3] ALEXIS RIVERA-ALEJANDRO
aka "Alex," aka "Villa,"
[4] ANGEL BETANCOURT-RIVERA,
aka "Papo Piña," aka "Piña,"
[5] ROBERTO C. FONTANEZ-VEGA
aka "Robert Amistad," aka "Robert Lancer,"
aka "Gordo," aka "Robert Oreja,"
[6] ABIMAEL SERRANO-FIGUEROA
aka "Abi,"
[7] CARLOS E. RIVERA-RIVERA,
aka "Carlitos," aka "Carlitos Nariz,"
[8] ISMAEL RIVERA-MALDONADO
aka "Jun Jun," aka "Junito,"
[9] JOSE GARCIA-RODRIGUEZ
aka "Juan," aka "Joe,"

[10] CARLOS GONZALEZ-FRANCO
aka "Carlitos," aka "Bocillo,"
aka "Carlitos Bocillo,"
[11] NATANAEL RUIZ-ORTEGA
aka "Nata,"
[12] ANGEL LOPEZ-MALDONADO
aka "Buby," aka "Oreja," aka "El Blanco,"
[13] JOSE RIVERA-SIERRA
aka "Rambo," aka "Jose A. Rivera-Rosario,"
aka "Jose Rivera-Serrano," aka "R,"
[14] JUAN RIVERA-GEORGE
aka "Tio,"
[15] JULIO ALEXIS ORTIZ-BERRIOS
aka "Alexis,"
[16] CARLOS A. RIVERA-RIVERA
aka "Benny"
[17] MIGUEL ANGEL VEGA-DELGADO
aka "Kiki," aka "Iki," aka "El Bizcochón,"
[18] VALERIE RIVERA-DEYA,
aka "Valeria,"
[19] SUANETTE GONZALEZ-RAMOS
aka "Suei,"
[20] JOSE L. FIGUEROA-CAMILO
aka "Chay,"
[21] ROSARIO RIVERA-GUZMAN,
[22] JAIME LOPEZ-CANALES
aka "Jimmy,"
[23] JUAN GONZALEZ-RAMOS
aka "Papito,"
[24] HECTOR RIVERA-BETANCOURT
aka "Monchi,"
[25] ANGEL LUIS BETANCOURT-ORTIZ
aka "Luis," aka "Cano,"
[26] RICARDO BETANCOURT-ORTIZ
aka "Gordo," aka "Ricky,"
[27] JOSE LUIS DIAZ-FIGUEROA
aka "Cuñao,"
[28] JUAN GARCIA-RODRIGUEZ
aka "Jon Jon,"
[29] LUIS X. RIVERA-RIVERA
aka "Jincho," aka Luis Michael," aka "Luis M.,"
[30] JOSE TRINIDAD-PAGAN
aka "Ojos Verdes,"
[31] EDGARDO RUIZ-TORRES
aka "Eggy,"
[32] BIENVENIDO LOPEZ-CRUZ
aka "Bienve,"

[33] JOSE E. PEÑA-MARTINEZ
aka "Pepe,"
[34] RAUL TORRES-SANTANA
aka "Negro," aka "Manota," aka "Bebo,"
[35] DAVID A. BULTRON-FLORES
aka "Negro,"
[36] LISBETH RODRIGUEZ-ECHEVARRIA
aka "Karen Figueroa-Gallardua," aka "Choki,"
[37] JORGE L. CRUZ-MALDONADO
aka "Chichón,"
[38] JOSE L. TORRES-AGOSTO,
aka "Michael,"
[39] VICTOR CASTRO-RODRIGUEZ
aka "Rockerito,"
[40] OSVALDO PEREZ
aka "Ozzie,"
[41] JUAN DOE #1
aka "Garnett," aka "Pichilingo,"
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[45] NOEL RODRIGUEZ-ADORNO
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aka "Doña Lolita," aka "Lola,"
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aka "Bimbo,"
[52] MARLENIS CARRASQUILLO-QUIÑONES,
[53] ANGEL LUIS RIVERA-RIVERA
aka "Bebo," aka "Bobolón,"
[54] HECTOR ORTIZ-MARQUEZ
aka "Papito,"
[55] RAMON RODRIGUEZ-IDELFONSO
aka "Mon," aka "Castor,"

the defendants herein, did knowingly and intentionally combine, conspire, confederate and agree together and with each other, and with diverse other persons known and unknown to the Grand

Jury, to commit an offense against the United States, that is, to knowingly and intentionally possess with the intent to distribute one (1) kilogram or more of a mixture or substance containing a detectable amount of heroin, a Schedule I Narcotic Drug Controlled Substance; fifty (50) grams or more of a mixture or substance containing a detectable amount of cocaine base ("crack"), a Schedule II Narcotic Drug Controlled Substance; five (5) kilograms or more of a mixture or substance containing a detectable amount of cocaine, a Schedule II Narcotic Drug Controlled Substance; a measurable amount of a mixture or substance containing a detectable amount of marijuana, a Schedule I Controlled Substance; detectable amounts of Oxycodone (commonly known as Percocet), a Schedule II Controlled Substance; and detectable amounts of Alprazolam (commonly known as Xanax), a Schedule IV Controlled Substance, within 1000 feet of a playground in Los Claveles Housing Project and in and around the Villa Margarita Ward, both located in the Municipality of Trujillo Alto, Puerto Rico. All in violation of Title 21, United States Code, §§ 841(a)(1), (b)(1)(A)(iii), 846, and 860.

OBJECTS OF THE CONSPIRACY

1. It was an object of the conspiracy to purchase heroin, cocaine, marijuana, Percocet, and Xanax in different areas of Puerto Rico for later distribution at drug points located within and around the Villa Margarita Ward and Los Claveles Housing Project located in the Municipality of Trujillo Alto, Puerto Rico, and elsewhere.

2. It was a further object of the conspiracy to distribute the narcotics at the drug points located within and around the Villa Margarita Ward and Los Claveles Housing Project both located in the Municipality of Trujillo Alto, Puerto Rico, and elsewhere.

3. It was a further object of the conspiracy to generate and obtain significant monetary gain or profit from the distribution of narcotics as described in paragraph two (2), above.

MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which the defendants and their co-conspirators and others known and unknown to the Grand Jury would further and accomplish the objects of the conspiracy included, but were not limited to the following:

1. It was part of the manner and means of the conspiracy that the organization would control the drug distribution business in and around Villa Margarita Ward and Los Claveles Housing Project located in the Municipality of Trujillo Alto, Puerto Rico and in other areas within or near the Municipality of Trujillo Alto, Puerto Rico.

2. It was part of the manner and means of the conspiracy that co-conspirator **[1] JOEL RIVERA-ALEJANDRO aka "J"** would order some of the co-defendants and their co-conspirators and other persons known and unknown to the Grand Jury to barbwire or lock the gate that gives access to the covered basketball court at Villa Margarita Ward in order to protect himself and his drug distribution business and in order to maintain control of his drug trafficking activities.

3. It was part of the manner and means of the conspiracy that some of the co-defendants and their co-conspirators and other persons known and unknown to the Grand Jury would purchase the heroin, cocaine and marijuana at wholesale prices outside the Villa Margarita Ward and Los Claveles Housing Project.

4. It was further part of the manner and means of the conspiracy that some of the co-defendants and their co-conspirators and other persons known and unknown to the Grand Jury

would cut, divide, and package such wholesale quantities of heroin, cocaine and marijuana in small packages for subsequent sale at the drug points located within and around the Villa Margarita Ward and Los Claveles Housing Project.

5. It was further part of the manner and means of the conspiracy that some of the co-defendants and their co-conspirators and other persons known and unknown to the Grand Jury would cook some of the cocaine purchased in order to make "crack" cocaine which was also packaged in small packages for subsequent sale at the drugs points located within and around the Villa Margarita Ward and Los Claveles Housing Project.

6. It was further part of the manner and means of the conspiracy that some of the co-defendants and their co-conspirators and other persons known and unknown to the Grand Jury would operate the drug point twenty-four (24) hours, seven (7) days a week, at various locations that would rotate and vary throughout the span of the conspiracy within and around the Villa Margarita Ward and Los Claveles Housing Project. The principal locations being (1) at the covered basketball court located across from the residences of co-conspirators **[1] JOEL RIVERA-ALEJANDRO aka "J," [2] CARLOS RIVERA-ALEJANDRO aka "Homero," [3] ALEXIS RIVERA-ALEJANDRO aka "Alex," aka "Villa," and [49] DOLORES ALEJANDRO-RODRIGUEZ aka "Doña Lolita," aka "Lola"** located at Villa Margarita Ward in Trujillo Alto; (2) on the curve of Calle Amapola in front and around the residence of co-conspirator **ANGEL BETANCOURT-RIVERA aka "Papo Piña," aka "Piña,"** and (3) through the entrance gate of the residences of co-conspirators **[1] JOEL RIVERA-ALEJANDRO aka "J," [2] CARLOS RIVERA-ALEJANDRO aka "Homero," [3] ALEXIS RIVERA-ALEJANDRO aka "Alex," aka "Villa," and [49] DOLORES ALEJANDRO-**

RODRIGUEZ aka "Doña Lolita," aka "Lola" located at Villa Margarita Ward in Trujillo Alto.

7. It was further part of the manner and means of the conspiracy that at times material to this indictment the drug point for the sale of heroin, crack cocaine, cocaine, marijuana, Percocet and Xanax operated in two (2) different shifts, that is, from 12 noon to 12 midnight and 12 midnight to 12 noon, with one (1) seller and one (1) lookout covering each shift and each drug point, unless otherwise agreed by **[1] JOEL RIVERA-ALEJANDRO aka "J"** or the seller.

8. It was further part of the manner and means of the conspiracy that **[1] JOEL RIVERA-ALEJANDRO aka "J"** would maintain a group of co-defendants and co-conspirators and other persons known and unknown to the Grand Jury supervising the activities of the drug distribution points located in and around Villa Margarita Ward and Los Claveles Housing Project located in the Municipality of Trujillo Alto, Puerto Rico and in other areas within or near the Municipality of Trujillo Alto, Puerto Rico.

9. It was further part of the manner and means of the conspiracy that the leaders of this organization would divide among themselves and their subordinates the proceeds of the drug trafficking sales.

10. It was further part of the manner and means of the conspiracy that some of the co-defendants and their co-conspirators and other persons known and unknown to the Grand Jury would store, prepare, cook, and/or package the heroin, crack cocaine, cocaine, marijuana, Percocet and Xanax in different locations within and outside the Villa Margarita Ward and Los Claveles Housing Project including, but not limited, to the residence of co-conspirator **[1] JOEL**

RIVERA-ALEJANDRO aka "J" and/or [2] CARLOS RIVERA-ALEJANDRO aka "Homero," located at Villa Margarita Ward in Trujillo Alto.

11. It was further part of the manner and means of the conspiracy that some of the co-defendants and their co-conspirators and other persons known and unknown to the Grand Jury would store weapons, drugs, and the drug trafficking proceeds in different locations within and outside the Villa Margarita Ward and Los Claveles Housing Project including, but not limited to, an area known as "el monte."

12. It was further part of the manner and means of the conspiracy that some of the co-defendants and their co-conspirators and other persons known and unknown to the Grand Jury would routinely possess, carry, brandish, and use firearms to protect themselves, the drugs, the drug trafficking proceeds, and the operation of the drug points from other drug trafficking organizations.

13. It was further part of the manner and means of the conspiracy that some of the co-defendants and their co-conspirators and other persons known and unknown to the Grand Jury would use cellular telephones to coordinate, negotiate, and confirm the delivery of narcotics, to coordinate the daily operations of the drug point, and to coordinate the necessary enforcement measures to be taken by the organization's enforcers.

14. It was further part of the manner and means of the conspiracy that some of the co-defendants and their co-conspirators and other persons known and unknown to the Grand Jury replaced the use of radio scanners for the use of cell phones with "push-to-talk" features in order to conceal from law enforcement officers communications between members of the drug trafficking organization and to communicate with each other at greater distances.

15. It was further part of the manner and means of the conspiracy that some of the co-defendants and their co-conspirators and other persons known and unknown to the Grand Jury would use and employ juveniles, that is, persons under the age of eighteen (18), to distribute narcotics at the drug distribution points located at Villa Margarita Ward and Los Claveles Housing Project.

16. It was further part of the manner and means of the conspiracy that some of the co-defendants and their co-conspirators and other persons known and unknown to the Grand Jury would meet either at the covered basketball court located at the Villa Margarita Ward in Trujillo Alto or at the yard of the residence of the leader **[1] JOEL RIVERA-ALEJANDRO aka "J"** known to members of the conspiracy as *"El Pentágono"* (the Pentagon) located at Villa Margarita Ward in Trujillo Alto in order to coordinate and discuss issues concerning their drug trafficking organization and in order to conduct the drug sales tallies.

17. It was further part of the manner and means of the conspiracy that some of the co-defendants and their co-conspirators and other persons known and unknown to the Grand Jury would sometimes use code names for the different narcotics sold when leaders and/or runners were called to supply additional narcotics to the seller. The code names used were: for the heroin "la tortuga" ("the turtle"), for the crack cocaine "la chinita" ("the orange" when orange colored crack cocaine capsules were used), for the cocaine "la nieve" ("the snow"), for the marijuana "la heno" or "el pasto" or "la quarter" for the $25 marijuana baggies, and for the Percocet "La Piki," or "la perco" or "la endo," the Xanax as "pali" among other names.

18. It was further part of the manner and means of the conspiracy that some of the co-defendants and their co-conspirators and other persons known and unknown to the Grand Jury would, when preparing the tally sheet, describe the different narcotics as follows: the heroin

decks as "LT" or "D" or "Dr," the crack cocaine capsules/vials as "TP" or "Kp," the $3 cocaine baggies as "P3," the $5 cocaine baggies as "P5," the $10 cocaine baggies as "P10," the $15 cocaine baggies as "P15," the $20 cocaine baggies as "P20," the $25 cocaine baggies as "P25," the marijuana baggies as "PT" or the $6 marijuana baggies as "Pt6," the $12 marijuana baggies, the $20 marijuana baggies as Pt20, the $25 marijuana baggies as Pt25, the Percocet pills as "Piki," "512" or "Pk."

19. It was further part of the manner and means of the conspiracy that some of the co-defendants and their co-conspirators and other persons known and unknown to the Grand Jury would use or threaten to use violence, force, and intimidation in order to gain or maintain control of the drug trafficking operations within and around Villa Margarita Ward and Los Claveles Housing Project.

20. It was further part of the manner and means of the conspiracy that some of the co-defendants and their co-conspirators and other persons known and unknown to the Grand Jury would have different roles and would perform different tasks in furtherance of the conspiracy.

ROLES OF THE MEMBERS OF THE CONSPIRACY

LEADER

[1] JOEL RIVERA-ALEJANDRO aka "J" is the owner, leader, and supervisor of this drug trafficking organization. As such, he controlled and supervised the drug trafficking operations within and around Villa Margarita Ward and Los Claveles Housing Project. He was directly and indirectly responsible for providing sufficient narcotics to the sellers for further distribution at the drug points. He also collected the proceeds of the sales from the sellers and paid the sellers. He would also supervise the daily activities of the sellers making sure that there were street sellers for every shift at the drug points. He would also be responsible for recruiting

street sellers and additional runners. He would prepare the sellers' schedules and prepare drug accounting ledgers to maintain accountability of the sales of the narcotics sold at the drug points. He was responsible for the purchase of bulk amounts of narcotics and for the packaging, transportation, and sale of such narcotics. In addition, he provided to his subordinates the illegal narcotics being sold at the drug points and part of the proceeds of the drug sales. He was also in charge of processing and packaging of the heroin, along with his brother co-conspirator **[3] ALEXIS RIVERA-ALEJANDRO aka "Alex," aka "Villa"** to be sold at the drug points. He would further allow and encourage members of the conspiracy to carry firearms in order to protect him, themselves, the drugs, the proceeds, and the operation of the drug points. He would further supply firearms to other members of the drug trafficking organization. He further acted as an enforcer for his drug trafficking organization and would commit acts of violence, or threaten acts of violence, and/or direct such acts to be carried out by his subordinates to ensure that the members obeyed his decisions and to protect himself, the members, the drugs, the proceeds, and the operating of the drug points. He also possessed firearms in furtherance of his drug trafficking activities.

SUPERVISORS AND/OR DRUG OWNERS

At different times during the span of the conspiracy, the supervisors assisted the leader by overseeing, coordinating, and supervising the sales of heroin, crack cocaine, cocaine, marijuana, Percocet and Xanax at the drug point. As supervisors, they were empowered to act and represent the leader when the leader was absent. They were also responsible for the accounting and tally of the drugs sold and the proceeds derived from the drug sales.

At different times during the span of the conspiracy, the drug owners were responsible for purchasing wholesale quantities of drugs for distribution at the drug points located within and

around Villa Margarita Ward and Los Claveles Housing Project. They were also responsible for the processing, preparation and the packaging of the drugs to be sold at the drug points. In addition to the leader **[1] JOEL RIVERA-ALEJANDRO aka "J"** the following co-conspirators acted as supervisors and/or drug owners in this drug trafficking organization:

[2] CARLOS RIVERA-ALEJANDRO aka "Homero," was responsible for directly supervising the runners and sellers for the crack cocaine. He was also in charge of cooking the cocaine in order to convert it to crack cocaine, and processing and packaging the crack cocaine along with his wife co-conspirator **[48] IDALIA MALDONADO-PEÑA** to be sold at the drug points. He further acted as an enforcer and as a seller for the drug trafficking organization and possessed firearms in furtherance of his drug trafficking activities. He would also give packages to sellers and tally up the drug proceeds against the drug packages.

[3] ALEXIS RIVERA-ALEJANDRO aka "Alex," aka "Villa," was responsible for supplying the heroin to be sold at the drug point. He was also responsible for processing and packaging the heroin to be sold at the drug points. He further acted as an enforcer and as a seller for the drug trafficking organization and possessed firearms in furtherance of his drug trafficking activities.

[4] ANGEL BETANCOURT-RIVERA, aka "Papo Piña," aka "Piña" and [13] JOSE RIVERA-SIERRA aka "Rambo," aka "Jose A. Rivera-Rosario," "Jose Rivera-Serrano," aka "R," were the owners of the five dollars ($5) cocaine baggies. **[4] ANGEL BETANCOURT-RIVERA, aka "Papo Piña," aka "Piña"** was also responsible for packaging and processing the five dollars ($5) cocaine for later distribution at the drug points. **[13] JOSE RIVERA-SIERRA aka "Rambo," aka "Jose A. Rivera-Rosario," "Jose Rivera-Serrano," aka "R,"** also acted as an enforcer and a seller for the drug trafficking organization.

[5] ROBERTO C. FONTANEZ-VEGA aka "Robert Amistad," aka "Robert Lancer," aka "Gordo," aka "Robert Oreja," was the owner and distributor of the twenty dollars ($20) cocaine baggies. He was also responsible for packaging and processing the twenty dollars ($20) cocaine for later distribution at the drug points. He also acted as a runner for the drug trafficking organization.

[6] ABIMAEL SERRANO-FIGUEROA aka "Abi and [13] JOSE RIVERA-SIERRA aka "Rambo," aka "Jose A. Rivera-Rosario," "Jose Rivera-Serrano," aka "R," owned the ten dollars ($10) cocaine baggies. **[6] ABIMAEL SERRANO-FIGUEROA aka "Abi** was also responsible for packaging and processing the ten dollars ($10) cocaine baggies for later distribution at the drug points. They both also acted as enforcers for the drug trafficking organization.

[7] CARLOS E. RIVERA-RIVERA, aka "Carlitos," aka "Carlitos Nariz" was the owner and distributor of the marijuana baggies also known as "la heno" or "el pasto." He also acted as a runner for the drug trafficking organization.

[8] ISMAEL RIVERA-MALDONADO aka "Jun Jun" aka "Junito" and [12] NATANAEL RUIZ-ORTEGA aka "Nata" were owners and distributors of the Percocet pills also known as "la endo." They also acted as a runners and sellers for the drug trafficking organization.

[9] JOSE GARCIA-RODRIGUEZ aka "Juan," aka "Joe" and [13] JOSE RIVERA-SIERRA aka "Rambo," aka "Jose A. Rivera-Rosario," "Jose Rivera-Serrano," aka "R," owned the three dollars ($3) cocaine baggies. They also acted as sellers for the drug trafficking organization.

[10] CARLOS GONZALEZ-FRANCO aka "Carlitos," aka "Bocillo," aka "Carlitos Bocillo" was the owner and distributor of the fifteen dollars ($15) cocaine baggies. He also acted as a seller for the drug trafficking organization.

[46] ADDIER ENCARNACION-CRUZ aka "Chango" owned the twelve dollars ($12) marijuana. He also acted as a seller for the drug trafficking organization.

ENFORCERS

The enforcers possessed, carried, brandished, and discharged firearms to protect: the leader, supervisors, other members of the organization, the operation of the drug trafficking business, the narcotics, and the proceeds derived from the sales of the narcotics. As enforcers, they also threatened and intimidated others in order to facilitate or accomplish one or more objects of the conspiracy. At various times during the conspiracy, some enforcers were assigned or authorized to provide protection or carry out acts of violence on behalf of the organization. In addition to **[1] JOEL RIVERA-ALEJANDRO aka "J," [2] CARLOS RIVERA-ALEJANDRO aka "Homero," [3] ALEXIS RIVERA-ALEJANDRO aka "Alex," aka "Villa," and [6] ABIMAEL SERRANO-FIGUEROA aka "Abi** who acted as enforcers for the drug trafficking organization the following, and others known and unknown to this Grand Jury, also acted as enforcers for this drug trafficking organization:

[12] ANGEL LOPEZ-MALDONADO aka "Buby," aka "Oreja," aka "El Blanco," who also acted as a runner and seller for the drug trafficking organization.

[13] JOSE RIVERA-SIERRA aka "Rambo," aka "Jose A. Rivera-Rosario," "Jose Rivera-Serrano," aka "R," who also acted as a seller for the drug trafficking organization.

RUNNERS

The runners worked under the direct supervision of the leader, supervisors and/or drug owners of the drug trafficking organization. They were responsible for providing sufficient narcotics to the sellers for further distribution at the drug points. They collected the proceeds of the sales from the sellers and paid the sellers. They would prepare drug accounting ledgers to maintain accountability of the sales of the narcotics sold at the drug points. In addition to **[5] ROBERTO C. FONTANEZ-VEGA aka "Robert Amistad," aka "Robert Lancer," aka "Gordo," aka "Robert Oreja," [7] CARLOS E. RIVERA-RIVERA, aka "Carlitos," aka "Carlitos Nariz," [8] ISMAEL RIVERA-MALDONADO aka "Jun Jun" aka "Junito," and [11] NATANAEL RUIZ-ORTEGA aka "Nata" and [12] ANGEL LOPEZ-MALDONADO aka "Buby," aka "Oreja," aka "El Blanco"** who acted as runners for the drug trafficking organization the following, and others known and unknown to this Grand Jury, also acted as runners for this drug trafficking organization:

[14] JUAN RIVERA-GEORGE aka "Tio,"

[15] JULIO ALEXIS ORTIZ-BERRIOS aka "Alexis,"

[16] CARLOS A. RIVERA-RIVERA aka "Benny" who also acted as seller for the drug trafficking organization.

SELLERS

The sellers would distribute street quantity amounts of heroin, crack cocaine, cocaine, marijuana, Percocet and Xanax within and around Villa Margarita Ward and Los Claveles Housing Project, and elsewhere. They were also accountable to the leader **[1] JOEL RIVERA-ALEJANDRO aka "J"** the supervisors and the runners for the drug proceeds of the drugs sold by them at the drug points. In addition to **[2] CARLOS RIVERA-ALEJANDRO aka**

"Homero," [3] ALEXIS RIVERA-ALEJANDRO aka "Alex," aka "Villa," [8] ISMAEL RIVERA-MALDONADO aka "Jun Jun" aka "Junito" and [12] NATANAEL RUIZ-ORTEGA aka "Nata," [9] JOSE GARCIA-RODRIGUEZ aka "Juan," aka "Joe," [10] CARLOS GONZALEZ-FRANCO aka "Carlitos," aka "Bocillo," aka "Carlitos Bocillo," [12] ANGEL LOPEZ-MALDONADO aka "Buby," aka "Oreja," aka "El Blanco," [13] JOSE RIVERA-SIERRA aka "Rambo," aka "Jose A. Rivera-Rosario," "Jose Rivera-Serrano," aka "R," and [16] CARLOS A. RIVERA-RIVERA aka "Benny" who acted as sellers for the drug trafficking organization the following, and others known and unknown to this Grand Jury, also acted as sellers for this drug trafficking organization:

[17] MIGUEL ANGEL VEGA-DELGADO aka "Kiki," aka "Iki," aka "El Bizcochón" who also acted as a lookout for the drug trafficking organization.

[18] VALERIE RIVERA-DEYA, aka "Valeria,"

[19] SUANETTE GONZALEZ-RAMOS aka "Suei" who also assisted co-conspirator **[8] CARLOS E. RIVERA-RIVERA aka "Carlitos," aka "Carlitos Nariz"** in delivering marijuana to the sellers when the sellers needed to replace the marijuana sold at the drug points.

[20] JOSE L. FIGUEROA-CAMILO aka "Chay" who also acted as a lookout for the drug trafficking organization.

[21] **ROSARIO RIVERA-GUZMAN** who also acted as a lookout for the drug trafficking organization.

[22] JAIME LOPEZ-CANALES aka "Jimmy" who also acted as a lookout for the drug trafficking organization.

[23] JUAN GONZALEZ-RAMOS aka "Papito,"

[24] HECTOR RIVERA-BETANCOURT aka "Monchi,"

[25] ANGEL LUIS BETANCOURT-ORTIZ aka "Luis," aka "Cano,"

[26] RICARDO BETANCOURT-ORTIZ aka "Gordo," aka "Ricky,"

[27] JOSE LUIS DIAZ-FIGUEROA aka "Cuñao,"

[28] JUAN GARCIA-RODRIGUEZ aka "Jon Jon,"

[29] LUIS X. RIVERA-RIVERA aka "Jincho," aka Luis Michael," aka "Luis M.,"

[30] JOSE TRINIDAD-PAGAN aka "Ojos Verdes,"

[31] EDGARDO RUIZ-TORRES aka "Eggy,"

[32] BIENVENIDO LOPEZ-CRUZ aka "Bienve,"

[33] JOSE E. PEÑA-MARTINEZ aka "Pepe,"

[34] RAUL TORRES-SANTANA aka "Negro," aka "Manota," aka "Bebo,"

[35] DAVID A. BULTRON-FLORES aka "Negro,"

[36] LISBETH RODRIGUEZ-ECHEVARRIA aka "Karen Figueroa-Gallardua," aka "Choki,"

[37] JORGE L. CRUZ-MALDONADO aka "Chichón,"

[38] JOSE L. TORRES-AGOSTO, aka "Michael,"

[39] VICTOR CASTRO-RODRIGUEZ aka "Rockerito,"

[40] OSVALDO PEREZ aka "Ozzie,"

[41] JUAN DOE #1 aka "Garnett," aka "Pichilingo,"

[42] ROBERTO BRUNO-DIAZ aka "Robertito," aka "Roberto El Flaco,"

[43] LUIS E. SANCHEZ-ENCARNACION aka "Luisito,"

[44] JONATHAN CARRASQUILLO-COLON aka "Jon," aka "Rogelio," aka "Jomo,"

[45] NOEL RODRIGUEZ-ADORNO aka "Roncho," aka "Carlanga,"

[46] ADDIER ENCARNACION-CRUZ aka "Chango,"

[47] IDALIA MALDONADO-PEÑA,

[48] JAIME RIVERA NIEVES.

FACILITATORS

Facilitators would assist the daily operations of the drug trafficking organization by performing various tasks including but not limited to providing "stash houses" for narcotics and/or weapons, and places for members to conduct daily activities. Some of the facilitators would also act as "lookouts," that is, they would monitor and advise the seller of any law enforcement activity near or around the drug point area. Some of these facilitators would also assist the runners in the collection of drug proceeds and deliver the drugs to the sellers. Some of the facilitators would also meet under the direction of the leader and/or supervisors at a specific location to cut, mix, prepare, and weigh amounts of controlled substances for street distribution. They would also package the heroin, crack cocaine, cocaine, and marijuana in single dosage amounts in baggies and capsules for later distribution at the drug point. Some of the facilitators would also assist the sellers in bringing the cash of the drug buyers and delivering the narcotics to the buyers in order to avoid the buyer going directly to the location of the seller and/or traffic. In addition to **[17] MIGUEL ANGEL VEGA-DELGADO aka "Kiki," aka "Iki," aka "El Bizcochón" [18] VALERIE RIVERA-DEYA, aka "Valeria," [19] SUANETTE GONZALEZ-RAMOS aka "Suei," [8] CARLOS E. RIVERA-RIVERA aka "Carlitos," aka "Carlitos Nariz" [20] JOSE L. FIGUEROA-CAMILO aka "Chay," [21] ROSARIO RIVERA-GUZMAN, and [22] JAIME LOPEZ-CANALES aka "Jimmy,"** who acted as facilitators for the drug trafficking organization the following, and others known and unknown to this Grand Jury, also acted as facilitators for this drug trafficking organization:

[49] DOLORES ALEJANDRO-RODRIGUEZ aka "Doña Lolita," aka "Lola,"

[50] MANUEL ANTONIO FERRER-HADDOCK aka "Palma,"

[51] RUBEN DELGADO-MALDONADO aka "Bimbo,"

[52] MARLENIS CARRASQUILLO-QUIÑONES,

[53] ANGEL LUIS RIVERA-RIVERA aka "Bebo," aka "Bobolón,"

[54] HECTOR ORTIZ-MARQUEZ aka "Papito,"

[55] RAMON RODRIGUEZ-IDELFONSO aka "Mon," aka "Castor,"

All in violation of Title 21, United States Code, §§ 841(a)(1), (b)(1)(A), 846, and 860.

COUNT TWO
(Aiding and Abetting in the Distribution of Heroin)

From in or about January 2006, the exact date being unknown to the Grand Jury, and continuing up to and until the date of the return of the instant indictment, in Trujillo Alto, the District of Puerto Rico, and elsewhere and within the jurisdiction of this Court,

[1] JOEL RIVERA-ALEJANDRO
aka "J,"
[2] CARLOS RIVERA-ALEJANDRO
aka Homero,
[3] ALEXIS RIVERA-ALEJANDRO
aka "Alex," aka "Villa,"
[4] ANGEL BETANCOURT-RIVERA,
aka "Papo Piña," aka "Piña,"
[5] ROBERTO C. FONTANEZ-VEGA
aka "Robert Amistad," aka "Robert Lancer,"
aka "Gordo," aka "Robert Oreja,"
[6] ABIMAEL SERRANO-FIGUEROA
aka "Abi,"
[7] CARLOS E. RIVERA-RIVERA,
aka "Carlitos," aka "Carlitos Nariz,"
[8] ISMAEL RIVERA-MALDONADO
aka "Jun Jun," aka "Junito,"
[9] JOSE GARCIA-RODRIGUEZ
aka "Juan," aka "Joe,"
[10] CARLOS GONZALEZ-FRANCO
aka "Carlitos," aka "Bocillo,"
aka "Carlitos Bocillo,"
[11] NATANAEL RUIZ-ORTEGA
aka "Nata,"

[12] ANGEL LOPEZ-MALDONADO
aka "Buby," aka "Oreja," aka "El Blanco,"
[13] JOSE RIVERA-SIERRA
aka "Rambo," aka "Jose A. Rivera-Rosario,"
aka "Jose Rivera-Serrano," aka "R,"
[14] JUAN RIVERA-GEORGE
aka "Tio,"
[15] JULIO ALEXIS ORTIZ-BERRIOS
aka "Alexis,"
[16] CARLOS A. RIVERA-RIVERA
aka "Benny"
[17] MIGUEL ANGEL VEGA-DELGADO
aka "Kiki," aka "Iki," aka "El Bizcochón,"
[18] VALERIE RIVERA-DEYA,
aka "Valeria,"
[19] SUANETTE GONZALEZ-RAMOS
aka "Suei,"
[20] JOSE L. FIGUEROA-CAMILO
aka "Chay,"
[21] ROSARIO RIVERA-GUZMAN,
[22] JAIME LOPEZ-CANALES
aka "Jimmy,"
[23] JUAN GONZALEZ-RAMOS
aka "Papito,"
[24] HECTOR RIVERA-BETANCOURT
aka "Monchi,"
[25] ANGEL LUIS BETANCOURT-ORTIZ
aka "Luis," aka "Cano,"
[26] RICARDO BETANCOURT-ORTIZ
aka "Gordo," aka "Ricky,"
[27] JOSE LUIS DIAZ-FIGUEROA
aka "Cuñao,"
[28] JUAN GARCIA-RODRIGUEZ
aka "Jon Jon,"
[29] LUIS X. RIVERA-RIVERA
aka "Jincho," aka Luis Michael," aka "Luis M.,"
[30] JOSE TRINIDAD-PAGAN
aka "Ojos Verdes,"
[31] EDGARDO RUIZ-TORRES
aka "Eggy,"
[32] BIENVENIDO LOPEZ-CRUZ
aka "Bienve,"
[33] JOSE E. PEÑA-MARTINEZ
aka "Pepe,"
[34] RAUL TORRES-SANTANA
aka "Negro," aka "Manota," aka "Bebo,"

[35] DAVID A. BULTRON-FLORES
aka "Negro,"
[36] LISBETH RODRIGUEZ-ECHEVARRIA
aka "Karen Figueroa-Gallardua," aka "Choki,"
[37] JORGE L. CRUZ-MALDONADO
aka "Chichón,"
[38] JOSE L. TORRES-AGOSTO,
aka "Michael,"
[39] VICTOR CASTRO-RODRIGUEZ
aka "Rockerito,"
[40] OSVALDO PEREZ
aka "Ozzie,"
[41] JUAN DOE #1
aka "Garnett," aka "Pichilingo,"
[42] ROBERTO BRUNO-DIAZ
aka "Robertito," aka "Roberto El Flaco,"
[43] LUIS E. SANCHEZ-ENCARNACION
aka "Luisito,"
[44] JONATHAN CARRASQUILLO-COLON
aka "Jon," aka "Rogelio," aka "Jomo,"
[45] NOEL RODRIGUEZ-ADORNO
aka "Roncho," aka "Carlanga,"
[46] ADDIER ENCARNACION-CRUZ
aka "Chango,"
[47] IDALIA MALDONADO-PEÑA,
[48] JAIME RIVERA NIEVES,
[49] DOLORES ALEJANDRO-RODRIGUEZ
aka "Doña Lolita," aka "Lola,"
[50] MANUEL ANTONIO FERRER-HADDOCK
aka "Palma,"
[51] RUBEN DELGADO-MALDONADO
aka "Bimbo,"
[52] MARLENIS CARRASQUILLO-QUIÑONES,
[53] ANGEL LUIS RIVERA-RIVERA
aka "Bebo," aka "Bobolón,"
[54] HECTOR ORTIZ-MARQUEZ
aka "Papito,"
[55] RAMON RODRIGUEZ-IDELFONSO
aka "Mon," aka "Castor,"

the defendants herein, aiding and abetting each other, and diverse other persons known and unknown to the Grand Jury, did knowingly and intentionally possess with the intent to distribute one (1) kilogram or more of a mixture or substance containing a detectable amount of heroin, a Schedule I Narcotic Drug Controlled Substance, within 1000 feet of a playground in Los

Claveles Housing Project and in and around Villa Margarita Ward both located in the Municipality of Trujillo Alto, Puerto Rico. All in violation of Title 21, United States Code, §§ 841(a)(1), (b)(1)(A), and 860 and Title 18, United States Code, § 2.

COUNT THREE

(Aiding and Abetting in the Distribution of Cocaine Base ("crack cocaine"))

From in or about January 2006, the exact date being unknown to the Grand Jury, and continuing up to and until the date of the return of the instant indictment, in Trujillo Alto, the District of Puerto Rico, and elsewhere and within the jurisdiction of this Court,

[1] JOEL RIVERA-ALEJANDRO
aka "J,"
[2] CARLOS RIVERA-ALEJANDRO
aka Homero,
[3] ALEXIS RIVERA-ALEJANDRO
aka "Alex," aka "Villa,"
[4] ANGEL BETANCOURT-RIVERA,
aka "Papo Piña," aka "Piña,"
[5] ROBERTO C. FONTANEZ-VEGA
aka "Robert Amistad," aka "Robert Lancer,"
aka "Gordo," aka "Robert Oreja,"
[6] ABIMAEL SERRANO-FIGUEROA
aka "Abi,"
[7] CARLOS E. RIVERA-RIVERA,
aka "Carlitos," aka "Carlitos Nariz,"
[8] ISMAEL RIVERA-MALDONADO
aka "Jun Jun," aka "Junito,"
[9] JOSE GARCIA-RODRIGUEZ
aka "Juan," aka "Joe,"
[10] CARLOS GONZALEZ-FRANCO
aka "Carlitos," aka "Bocillo,"
aka "Carlitos Bocillo,"
[11] NATANAEL RUIZ-ORTEGA
aka "Nata,"
[12] ANGEL LOPEZ-MALDONADO
aka "Buby," aka "Oreja," aka "El Blanco,"
[13] JOSE RIVERA-SIERRA
aka "Rambo," aka "Jose A. Rivera-Rosario,"
aka "Jose Rivera-Serrano," aka "R,"
[14] JUAN RIVERA-GEORGE
aka "Tio,"
[15] JULIO ALEXIS ORTIZ-BERRIOS
aka "Alexis,"

[16] CARLOS A. RIVERA-RIVERA
aka "Benny"
[17] MIGUEL ANGEL VEGA-DELGADO
aka "Kiki," aka "Iki," aka "El Bizcochón,"
[18] VALERIE RIVERA-DEYA,
aka "Valeria,"
[19] SUANETTE GONZALEZ-RAMOS
aka "Suei,"
[20] JOSE L. FIGUEROA-CAMILO
aka "Chay,"
[21] ROSARIO RIVERA-GUZMAN,
[22] JAIME LOPEZ-CANALES
aka "Jimmy,"
[23] JUAN GONZALEZ-RAMOS
aka "Papito,"
[24] HECTOR RIVERA-BETANCOURT
aka "Monchi,"
[25] ANGEL LUIS BETANCOURT-ORTIZ
aka "Luis," aka "Cano,"
[26] RICARDO BETANCOURT-ORTIZ
aka "Gordo," aka "Ricky,"
[27] JOSE LUIS DIAZ-FIGUEROA
aka "Cuñao,"
[28] JUAN GARCIA-RODRIGUEZ
aka "Jon Jon,"
[29] LUIS X. RIVERA-RIVERA
aka "Jincho," aka Luis Michael," aka "Luis M.,"
[30] JOSE TRINIDAD-PAGAN
aka "Ojos Verdes,"
[31] EDGARDO RUIZ-TORRES
aka "Eggy,"
[32] BIENVENIDO LOPEZ-CRUZ
aka "Bienve,"
[33] JOSE E. PEÑA-MARTINEZ
aka "Pepe,"
[34] RAUL TORRES-SANTANA
aka "Negro," aka "Manota," aka "Bebo,"
[35] DAVID A. BULTRON-FLORES
aka "Negro,"
[36] LISBETH RODRIGUEZ-ECHEVARRIA
aka "Karen Figueroa-Gallardua," aka "Choki,"
[37] JORGE L. CRUZ-MALDONADO
aka "Chichón,"
[38] JOSE L. TORRES-AGOSTO,
aka "Michael,"
[39] VICTOR CASTRO-RODRIGUEZ
aka "Rockerito,"

[40] OSVALDO PEREZ
aka "Ozzie,"
[41] JUAN DOE #1
aka "Garnett," aka "Pichilingo,"
[42] ROBERTO BRUNO-DIAZ
aka "Robertito," aka "Roberto El Flaco,"
[43] LUIS E. SANCHEZ-ENCARNACION
aka "Luisito,"
[44] JONATHAN CARRASQUILLO-COLON
aka "Jon," aka "Rogelio," aka "Jomo,"
[45] NOEL RODRIGUEZ-ADORNO
aka "Roncho," aka "Carlanga,"
[46] ADDIER ENCARNACION-CRUZ
aka "Chango,"
[47] IDALIA MALDONADO-PEÑA,
[48] JAIME RIVERA NIEVES,
[49] DOLORES ALEJANDRO-RODRIGUEZ
aka "Doña Lolita," aka "Lola,"
[50] MANUEL ANTONIO FERRER-HADDOCK
aka "Palma,"
[51] RUBEN DELGADO-MALDONADO
aka "Bimbo,"
[52] MARLENIS CARRASQUILLO-QUIÑONES,
[53] ANGEL LUIS RIVERA-RIVERA
aka "Bebo," aka "Bobolón,"
[54] HECTOR ORTIZ-MARQUEZ
aka "Papito,"
[55] RAMON RODRIGUEZ-IDELFONSO
aka "Mon," aka "Castor,"

the defendants herein, aiding and abetting each other, and diverse other persons known and unknown to the Grand Jury, did knowingly and intentionally possess with the intent to distribute fifty (50) grams or more of a mixture or substance containing a detectable amount of cocaine base (crack cocaine), a Schedule II Narcotic Drug Controlled Substance, within 1000 feet of a playground in Los Claveles Housing Project and in and around Villa Margarita Ward both located in the Municipality of Trujillo Alto, Puerto Rico. All in violation of Title 21, United States Code, §§ 841(a)(1), (b)(1)(A), and 860 and Title 18, United States Code, § 2.

COUNT FOUR
(Aiding and Abetting in the Distribution of Cocaine)

From in or about January 2006, the exact date being unknown to the Grand Jury, and continuing up to and until the date of the return of the instant indictment, in Trujillo Alto, the District of Puerto Rico, and elsewhere and within the jurisdiction of this Court,

[1] JOEL RIVERA-ALEJANDRO
aka "J,"
[2] CARLOS RIVERA-ALEJANDRO
aka Homero,
[3] ALEXIS RIVERA-ALEJANDRO
aka "Alex," aka "Villa,"
[4] ANGEL BETANCOURT-RIVERA,
aka "Papo Piña," aka "Piña,"
[5] ROBERTO C. FONTANEZ-VEGA
aka "Robert Amistad," aka "Robert Lancer,"
aka "Gordo," aka "Robert Oreja,"
[6] ABIMAEL SERRANO-FIGUEROA
aka "Abi,"
[7] CARLOS E. RIVERA-RIVERA,
aka "Carlitos," aka "Carlitos Nariz,"
[8] ISMAEL RIVERA-MALDONADO
aka "Jun Jun," aka "Junito,"
[9] JOSE GARCIA-RODRIGUEZ
aka "Juan," aka "Joe,"
[10] CARLOS GONZALEZ-FRANCO
aka "Carlitos," aka "Bocillo,"
aka "Carlitos Bocillo,"
[11] NATANAEL RUIZ-ORTEGA
aka "Nata,"
[12] ANGEL LOPEZ-MALDONADO
aka "Buby," aka "Oreja," aka "El Blanco,"
[13] JOSE RIVERA-SIERRA
aka "Rambo," aka "Jose A. Rivera-Rosario,"
aka "Jose Rivera-Serrano," aka "R,"
[14] JUAN RIVERA-GEORGE
aka "Tio,"
[15] JULIO ALEXIS ORTIZ-BERRIOS
aka "Alexis,"
[16] CARLOS A. RIVERA-RIVERA
aka "Benny"
[17] MIGUEL ANGEL VEGA-DELGADO
aka "Kiki," aka "Iki," aka "El Bizcochón,"
[18] VALERIE RIVERA-DEYA,
aka "Valeria,"

[19] SUANETTE GONZALEZ-RAMOS
aka "Suei,"
[20] JOSE L. FIGUEROA-CAMILO
aka "Chay,"
[21] ROSARIO RIVERA-GUZMAN,
[22] JAIME LOPEZ-CANALES
aka "Jimmy,"
[23] JUAN GONZALEZ-RAMOS
aka "Papito,"
[24] HECTOR RIVERA-BETANCOURT
aka "Monchi,"
[25] ANGEL LUIS BETANCOURT-ORTIZ
aka "Luis," aka "Cano,"
[26] RICARDO BETANCOURT-ORTIZ
aka "Gordo," aka "Ricky,"
[27] JOSE LUIS DIAZ-FIGUEROA
aka "Cuñao,"
[28] JUAN GARCIA-RODRIGUEZ
aka "Jon Jon,"
[29] LUIS X. RIVERA-RIVERA
aka "Jincho," aka Luis Michael," aka "Luis M.,"
[30] JOSE TRINIDAD-PAGAN
aka "Ojos Verdes,"
[31] EDGARDO RUIZ-TORRES
aka "Eggy,"
[32] BIENVENIDO LOPEZ-CRUZ
aka "Bienve,"
[33] JOSE E. PEÑA-MARTINEZ
aka "Pepe,"
[34] RAUL TORRES-SANTANA
aka "Negro," aka "Manota," aka "Bebo,"
[35] DAVID A. BULTRON-FLORES
aka "Negro,"
[36] LISBETH RODRIGUEZ-ECHEVARRIA
aka "Karen Figueroa-Gallardua," aka "Choki,"
[37] JORGE L. CRUZ-MALDONADO
aka "Chichón,"
[38] JOSE L. TORRES-AGOSTO,
aka "Michael,"
[39] VICTOR CASTRO-RODRIGUEZ
aka "Rockerito,"
[40] OSVALDO PEREZ
aka "Ozzie,"
[41] JUAN DOE #1
aka "Garnett," aka "Pichilingo,"
[42] ROBERTO BRUNO-DIAZ
aka "Robertito," aka "Roberto El Flaco,"

[43] LUIS E. SANCHEZ-ENCARNACION
aka "Luisito,"
[44] JONATHAN CARRASQUILLO-COLON
aka "Jon," aka "Rogelio," aka "Jomo,"
[45] NOEL RODRIGUEZ-ADORNO
aka "Roncho," aka "Carlanga,"
[46] ADDIER ENCARNACION-CRUZ
aka "Chango,"
[47] IDALIA MALDONADO-PEÑA,
[48] JAIME RIVERA NIEVES,
[49] DOLORES ALEJANDRO-RODRIGUEZ
aka "Doña Lolita," aka "Lola,"
[50] MANUEL ANTONIO FERRER-HADDOCK
aka "Palma,"
[51] RUBEN DELGADO-MALDONADO
aka "Bimbo,"
[52] MARLENIS CARRASQUILLO-QUIÑONES,
[53] ANGEL LUIS RIVERA-RIVERA
aka "Bebo," aka "Bobolón,"
[54] HECTOR ORTIZ-MARQUEZ
aka "Papito,"
[55] RAMON RODRIGUEZ-IDELFONSO
aka "Mon," aka "Castor,"

the defendants herein, aiding and abetting each other, and diverse other persons known and unknown to the Grand Jury, did knowingly and intentionally possess with the intent to distribute five (5) kilograms or more of a mixture or substance containing a detectable amount of cocaine, a Schedule II Narcotic Drug Controlled Substance, within 1000 feet of a playground in Los Claveles Housing Project and in and around Villa Margarita Ward both located in the Municipality of Trujillo Alto, Puerto Rico. All in violation of Title 21, United States Code, §§ 841(a)(1), (b)(1)(A), and 860 and Title 18, United States Code, § 2.

COUNT FIVE
(Aiding and Abetting in the Distribution of Marijuana)

From in or about January 2006, the exact date being unknown to the Grand Jury, and continuing up to and until the date of the return of the instant indictment, in Trujillo Alto, the District of Puerto Rico, and elsewhere and within the jurisdiction of this Court,

[1] JOEL RIVERA-ALEJANDRO
aka "J,"
[2] CARLOS RIVERA-ALEJANDRO
aka Homero,
[3] ALEXIS RIVERA-ALEJANDRO
aka "Alex," aka "Villa,"
[4] ANGEL BETANCOURT-RIVERA,
aka "Papo Piña," aka "Piña,"
[5] ROBERTO C. FONTANEZ-VEGA
aka "Robert Amistad," aka "Robert Lancer,"
aka "Gordo," aka "Robert Oreja,"
[6] ABIMAEL SERRANO-FIGUEROA
aka "Abi,"
[7] CARLOS E. RIVERA-RIVERA,
aka "Carlitos," aka "Carlitos Nariz,"
[8] ISMAEL RIVERA-MALDONADO
aka "Jun Jun," aka "Junito,"
[9] JOSE GARCIA-RODRIGUEZ
aka "Juan," aka "Joe,"
[10] CARLOS GONZALEZ-FRANCO
aka "Carlitos," aka "Bocillo,"
aka "Carlitos Bocillo,"
[11] NATANAEL RUIZ-ORTEGA
aka "Nata,"
[12] ANGEL LOPEZ-MALDONADO
aka "Buby," aka "Oreja," aka "El Blanco,"
[13] JOSE RIVERA-SIERRA
aka "Rambo," aka "Jose A. Rivera-Rosario,"
aka "Jose Rivera-Serrano," aka "R,"
[14] JUAN RIVERA-GEORGE
aka "Tio,"
[15] JULIO ALEXIS ORTIZ-BERRIOS
aka "Alexis,"
[16] CARLOS A. RIVERA-RIVERA
aka "Benny"
[17] MIGUEL ANGEL VEGA-DELGADO
aka "Kiki," aka "Iki," aka "El Bizcochón,"
[18] VALERIE RIVERA-DEYA,
aka "Valeria,"
[19] SUANETTE GONZALEZ-RAMOS
aka "Suei,"
[20] JOSE L. FIGUEROA-CAMILO
aka "Chay,"
[21] ROSARIO RIVERA-GUZMAN,
[22] JAIME LOPEZ-CANALES
aka "Jimmy,"
[23] JUAN GONZALEZ-RAMOS
aka "Papito,"

[24] HECTOR RIVERA-BETANCOURT
aka "Monchi,"
[25] ANGEL LUIS BETANCOURT-ORTIZ
aka "Luis," aka "Cano,"
[26] RICARDO BETANCOURT-ORTIZ
aka "Gordo," aka "Ricky,"
[27] JOSE LUIS DIAZ-FIGUEROA
aka "Cuñao,"
[28] JUAN GARCIA-RODRIGUEZ
aka "Jon Jon,"
[29] LUIS X. RIVERA-RIVERA
aka "Jincho," aka Luis Michael," aka "Luis M.,"
[30] JOSE TRINIDAD-PAGAN
aka "Ojos Verdes,"
[31] EDGARDO RUIZ-TORRES
aka "Eggy,"
[32] BIENVENIDO LOPEZ-CRUZ
aka "Bienve,"
[33] JOSE E. PEÑA-MARTINEZ
aka "Pepe,"
[34] RAUL TORRES-SANTANA
aka "Negro," aka "Manota," aka "Bebo,"
[35] DAVID A. BULTRON-FLORES
aka "Negro,"
[36] LISBETH RODRIGUEZ-ECHEVARRIA
aka "Karen Figueroa-Gallardua," aka "Choki,"
[37] JORGE L. CRUZ-MALDONADO
aka "Chichón,"
[38] JOSE L. TORRES-AGOSTO,
aka "Michael,"
[39] VICTOR CASTRO-RODRIGUEZ
aka "Rockerito,"
[40] OSVALDO PEREZ
aka "Ozzie,"
[41] JUAN DOE #1
aka "Garnett," aka "Pichilingo,"
[42] ROBERTO BRUNO-DIAZ
aka "Robertito," aka "Roberto El Flaco,"
[43] LUIS E. SANCHEZ-ENCARNACION
aka "Luisito,"
[44] JONATHAN CARRASQUILLO-COLON
aka "Jon," aka "Rogelio," aka "Jomo,"
[45] NOEL RODRIGUEZ-ADORNO
aka "Roncho," aka "Carlanga,"
[46] ADDIER ENCARNACION-CRUZ
aka "Chango,"
[47] IDALIA MALDONADO-PEÑA,

[48] JAIME RIVERA NIEVES,
[49] DOLORES ALEJANDRO-RODRIGUEZ
aka "Doña Lolita," aka "Lola,"
[50] MANUEL ANTONIO FERRER-HADDOCK
aka "Palma,"
[51] RUBEN DELGADO-MALDONADO
aka "Bimbo,"
[52] MARLENIS CARRASQUILLO-QUIÑONES,
[53] ANGEL LUIS RIVERA-RIVERA
aka "Bebo," aka "Bobolón,"
[54] HECTOR ORTIZ-MARQUEZ
aka "Papito,"
[55] RAMON RODRIGUEZ-IDELFONSO
aka "Mon," aka "Castor,"

the defendants herein, aiding and abetting each other, and diverse other persons known and unknown to the Grand Jury, did knowingly and intentionally possess with the intent to distribute a measurable amount of a mixture or substance containing a detectable amount of marijuana, a Schedule I Controlled Substance, within 1000 feet of a playground Los Claveles Housing Project and in and around Villa Margarita Ward both located in the Municipality of Trujillo Alto, Puerto Rico. All in violation of Title 21, United States Code, §§ 841(a)(1), (b)(1)(A), and 860 and Title 18, United States Code, § 2.

COUNT SIX
(Conspiracy to Possess Firearms in Furtherance of Drug Trafficking Crimes)

From in or about January 2006, the exact date being unknown to the Grand Jury, and continuing up to and until the date of the return of the instant indictment, in Trujillo Alto, the District of Puerto Rico, and elsewhere and within the jurisdiction of this Court,

[1] JOEL RIVERA-ALEJANDRO
aka "J,"
[2] CARLOS RIVERA-ALEJANDRO
aka Homero,
[3] ALEXIS RIVERA-ALEJANDRO
aka "Alex," aka "Villa,"
[4] ANGEL BETANCOURT-RIVERA,
aka "Papo Piña," aka "Piña,"

[5] ROBERTO C. FONTANEZ-VEGA
aka "Robert Amistad," aka "Robert Lancer,"
aka "Gordo," aka "Robert Oreja,"
[6] ABIMAEL SERRANO-FIGUEROA
aka "Abi,"
[7] CARLOS E. RIVERA-RIVERA,
aka "Carlitos," aka "Carlitos Nariz,"
[8] ISMAEL RIVERA-MALDONADO
aka "Jun Jun," aka "Junito,"
[9] JOSE GARCIA-RODRIGUEZ
aka "Juan," aka "Joe,"
[11] NATANAEL RUIZ-ORTEGA
aka "Nata,"
[12] ANGEL LOPEZ-MALDONADO
aka "Buby," aka "Oreja," aka "El Blanco,"
[13] JOSE RIVERA-SIERRA
aka "Rambo," aka "Jose A. Rivera-Rosario,"
aka "Jose Rivera-Serrano," aka "R,"
[14] JUAN RIVERA-GEORGE
aka "Tio,"
[15] JULIO ALEXIS ORTIZ-BERRIOS
aka "Alexis,"
[16] CARLOS A. RIVERA-RIVERA
aka "Benny"
[18] VALERIE RIVERA-DEYA,
aka "Valeria,"
[24] HECTOR RIVERA-BETANCOURT
aka "Monchi,"
[25] ANGEL LUIS BETANCOURT-ORTIZ
aka "Luis," aka "Cano,"
[26] RICARDO BETANCOURT-ORTIZ
aka "Gordo," aka "Ricky,"
[27] JOSE LUIS DIAZ-FIGUEROA
aka "Cuñao,"
[29] LUIS X. RIVERA-RIVERA
aka "Jincho," aka Luis Michael," aka "Luis M.,"
[30] JOSE TRINIDAD-PAGAN
aka "Ojos Verdes,"
[31] EDGARDO RUIZ-TORRES
aka "Eggy,"
[34] RAUL TORRES-SANTANA
aka "Negro," aka "Manota," aka "Bebo,"
[36] LISBETH RODRIGUEZ-ECHEVARRIA
aka "Karen Figueroa-Gallardua," aka "Choki,"
[37] JORGE L. CRUZ-MALDONADO
aka "Chichón,"
[40] OSVALDO PEREZ
aka "Ozzie,"

[42] ROBERTO BRUNO-DIAZ
aka "Robertito," aka "Roberto El Flaco,"
[43] LUIS E. SANCHEZ-ENCARNACION
aka "Luisito,"
[44] JONATHAN CARRASQUILLO-COLON
aka "Jon," aka "Rogelio," aka "Jomo,"
[49] DOLORES ALEJANDRO-RODRIGUEZ
aka "Doña Lolita," aka "Lola,"
[51] RUBEN DELGADO-MALDONADO
aka "Bimbo,"

the defendants herein, did knowingly and intentionally combine, conspire, confederate and agree together and with each other, and with diverse other persons known and unknown to the Grand Jury, to commit an offense against the United States, that is, to knowingly and unlawfully possess firearms, as that term is defined in Title 18, United States Code, § 921(a)(3), that is: firearms of unknown brands, models, calibers and serial numbers, in furtherance of drug trafficking crimes, as that term is defined in Title 18, United States Code, § 924(c)(1)(D)(2), that is: possession with intent to distribute heroin, cocaine base, cocaine, marijuana, Percocet and Xanax, offenses for which they may be prosecuted in a court of the United States as a violation of Title 21, United States Code, Sections 841(a)(1) and 846 as charged in Counts One, Two, Three, Four and Five of the instant Indictment. All in violation of Title 18, United States Code, §§ 924(c)(1) and 924(o).

COUNT SEVEN
(Narcotics Forfeiture Allegations)

1. Upon conviction of one or more of the offenses alleged in Counts One (1) through Six(6) of this Indictment, pursuant to Title 21, United States Code, Section 853 and Title 18, United States Code, Section 982(a)(1), each defendant who is convicted of one or more of the offenses set forth in said counts, shall forfeit to the United States the following property:

a. All right, title, and interest in any and all property involved in each offense in violation of Title 21, United States Code, Section 846, for which the defendants are convicted, and all property traceable to such property, including the following: 1) all commissions, fees and other property constituting proceeds obtained as a result of those violations; and 2) all property

used in any manner or part to commit or to facilitate the commission of those violations, including but not limited to:

1) All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at Barrio Las Cuevas of Trujillo Alto, Puerto Rico, more particularly described in Puerto Rico Property Registry.

2) All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at Barrio Las Cuevas of Trujillo Alto, Puerto Rico, more particularly described in Puerto Rico Property Registry as:

> URBANA: Predio de terreno radicado en el Barrio Las Cuevas del municipio de Trujillo Alto, con una cabida superficial de CUATROCIENTOS METROS CUADRADOS Y CUARENTA Y UNA CENTESIMAS DE OTRO (400.41 m.c.), y en lindes, por el Norte, en veintidos metros y setenta y ocho centésimas, con el lote número tres segregado; por el SUR, en veinte metros y veintiuna centésimas con el lote número Uno segregado; por el ESTE, en veinte metros y setenta y cinco centésimas, con terrenos de la señora Mercedes Alejandro; y por el OESTE, en diesiseis metros y cincuenta centésimas, con terrenos propiedad de Rafael Cancel.
>
> Finca No. 8821, Inscrita al Folio 01 del Tomo 810 de Trujillo Alto, 1ra inscripción. Propiedad inscrita a favor de Carlos Rivera Alejandro e Idalia Maldonado Peña.

3) All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at Barrio Las Cuevas of Trujillo Alto, Puerto Rico, more particularly described in Puerto Rico Property Registry as:

> URBANA: Predio de terreno radicado en el Barrio Las Cuevas del municipio de Trujillo Alto, con una cabida superficial de CUATROCIENTOS CUATRO METROS CUADRADOS Y TRECE CENTESIMAS DE OTRO (404.13 m.c.), y en lindes, por el Norte, en veinticuatro metros y setenta y seis centésimas, con el remanente de la finca principal de la cual se segrega; por el SUR, en veintidos metros y setenta y ocho centésimas con el lote número Dos segregado; por el ESTE, en catorce metros y setenta centésimas con terrenos de Mercedes Alejandro y por el OESTE, en dos alineaciones distintas que suman diecinueve metros y treinta y una centésimas con terrenos de Rafael Cancel.
>
> Finca No. 8822, Inscrita al Folio 31 del Tomo 176 de Trujillo Alto, 1ra inscripción. Donación a Dolores Alejandro.

4) All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at Barrio Las Cuevas of Trujillo Alto, Puerto Rico, which was used to facilitate the commission of the crimes charged in count one through five of this indictment, more particularly described in the Puerto Rico Property Registry as:

> URBANA: Remanente de terreno radicado en el Barrio Las Cuevas del municipio de Trujillo Alto, con una cabida superficial de aproximadamente QUINIENTOS METROS CUADRADOS, y en lindes; por el NORTE, con los señores Pagán y Amador; por el SUR, con el lote Tres segregado; por el ESTE, con Mercedes Alejandro y por el OESTE, con Emilio López, antes Rafael Cancel.
>
> Remanente: Finca 4058 Folio 228 vto, Tomo 91, de Trujillo Alto, 4ta inscripción. Propiedad inscrita a favor de Manuel Alejandro.

5) All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at Barrio Las Cuevas of Trujillo Alto, Puerto Rico, more particularly described in the Puerto Rico Property Registry as:

> URBANA: Solar identificado con el número 6 en el plano de lotificación con un área de 1,934.72 metros cuadrados, equivalentes 0.492 cuerda. En lindes por el Norte, en 33.00 metros lineales, con el solar No. 7; por el Sur, en 52.00 metros lineales, con el solar No. 5; por el Este, en 45.56 metros lineales con terrenos pertenecientes a la Sucesión de Evaristo Alejandro; y por el Oeste, en 48.76 metros lineales, con una franja de terreno dedicada a carretera para uso público.
>
> Finca No. 11421, Inscrita al Folio 61 del Tomo 788 de Trujillo Alto, 4ta inscripción. Propiedad inscrita a favor de Carlos Rivera Alejandro e Idalia Maldonado Pena, en una proporción de 50% para cada uno.

b. A sum of money equal to the total amount of money involved in each offense, or conspiracy to commit such offense, for which the defendant is convicted, to wit: **ten million dollars** ($10,000,000.00) in U.S. Currency. If more than one defendant is convicted of an offense, the defendants so convicted are jointly and severally liable for the amount involved in such offense.

c. Pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b), each defendant shall forfeit substitute property, up to the value of the amount described in paragraph one (1), if, by any act or omission of the defendant, the property described in paragraph one (1), or any portion thereof, cannot be located upon the exercise of due diligence; has been transferred, sold to or deposited with a third party; has been placed beyond the jurisdiction of the court; has been substantially diminished in value; or has been commingled with other property which cannot be divided without difficulty.

All in accordance with Title 18, United States Code, §§ 853 and 982(a)(1) and Rule 32.2(a) of the Federal Rules of Criminal Procedure.

TRUE BILL

Foreperson

Date: May 15/2009

ROSA EMILIA RODRIGUEZ-VELEZ
United States Attorney

José Ruiz-Santiago
Assistant United States Attorney
Chief, Criminal Division

Warren Vázquez
Assistant United States Attorney
Chief, Violent Crimes Unit

Dina Avila-Jiménez
Assistant United States Attorney

5/5/09

Mariana E. Bauzá-Almonte
Assistant United States Attorney

AO 245B (Rev. 02/18) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

District of Puerto Rico

UNITED STATES OF AMERICA
v.
Joel Rivera-Alejandro

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:09-cr-00165-01 (CCC)

USM Number: 17830-069

Diego H. Alcala-Laboy
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☑ was found guilty on count(s) after a plea of not guilty. ONE, TWO, THREE, FOUR, FIVE, SIX OF THE INDICTMENT ON JANUARY 5, 2016.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21:841(a)(1), (b)(1)(A)(iii), 846, & 860	NARCOTICS - SELL, DISTRIBUTE, OR DISPENSE	5/5/2009	1
21:841(a)(1), (b)(1)(A), & 860, 18:2	A/A NARCOTICS - SELL, DISTRIBUTE, OR DISPENSE	5/5/2009	2
21:841(a)(1), (b)(1)(A), & 860, 18:2	A/A NARCOTICS - SELL, DISTRIBUTE, OR DISPENSE	5/5/2009	3

The defendant is sentenced as provided in pages 3 through 9 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

5/15/2018
Date of Imposition of Judgment

S/ Carmen C. Cerezo
Signature of Judge

Carmen C. Cerezo, U.S. District Judge
Name and Title of Judge

5/15/2018
Date

DEFENDANT: Joel Rivera-Alejandro
CASE NUMBER: 3:09-cr-00165-01 (CCC)

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
21:841(a)(1), (b)(1)(A), & 860, 18:2	A/A NARCOTICS - SELL, DISTRIBUTE, OR DISPENSE	5/5/2009	4
21:841(a)(1), (b)(1)(A), & 860, 18:2	A/A MARIJUANA - SELL, DISTRIBUTE, OR DISPENSE	5/5/2009	5
18:924(c)(1) & 924(o)	VIOLENT CRIME/DRUGS/MACHINE GUN	5/5/2009	6

DEFENDANT: Joel Rivera-Alejandro
CASE NUMBER: 3:09-cr-00165-01 (CCC)

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

Three hundred and sixty (360) months as to each of Counts One, Two, Three, and Four, one hundred and twenty (120) months as to Count Five, and two hundred and forty (240) months as to Count Six, to be served concurrently with each other.

☑ The court makes the following recommendations to the Bureau of Prisons:

1. The defendant receive courses in English as a second language.
2. The defendant participate in vocational training in any available trade.
3. The defendant be designated to Fort Dix or Coleman.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Joel Rivera-Alejandro
CASE NUMBER: 3:09-cr-00165-01 (CCC)

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

Ten (10) years as to each of Counts One, Two and Four, eight (8) years as to Count Three, four (4) years as Count Five, and three (3) years as to Count Six, all to be served concurrently with each other.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Joel Rivera-Alejandro
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STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: Joel Rivera-Alejandro
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SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not commit another Federal, state, or local crime, and shall observe the standard conditions of supervised release recommended by the United States Sentencing Commission and adopted by this Court.

2. The defendant shall not unlawfully possess controlled substances.

3. The defendant shall refrain from possessing firearms, destructive devices, and other dangerous weapons.

4. The defendant shall refrain from the unlawful use of controlled substances and submit to a drug test within fifteen (15) days of release. Thereafter, he shall submit to random drug testing, no less than three (3) samples during the supervision period and not to exceed 104 samples per year, in accordance with the Drug Aftercare Program Policy of the U.S. Probation Office approved by this Court. If any such samples detect substance abuse, the defendant shall participate in an in-patient or out-patient substance abuse treatment program for evaluation and/or treatment, as arranged by the U.S. Probation Officer until duly discharged. The defendant is required to contribute to the cost of services rendered (co-payment) in an amount arranged by the Probation Officer based on his ability to pay or availability of third party payments.

5. The defendant shall participate in transitional and reentry support services, including cognitive behavioral treatment services, under the guidance and supervision of the Probation Officer. The defendant shall remain in the services until satisfactorily discharged by the service provider with the approval of the Probation Officer.

6. The defendant shall participate in a program or course of study aimed at improving educational level and/or complete a vocational training program. In the alternative, he shall participate in a job placement program recommended by the Probation Officer.

7. The defendant shall provide the U.S. Probation Officer access to any financial information upon request.

8. The defendant shall participate in an approved mental health treatment program for evaluation and/or treatment services determination. If deemed necessary, the treatment will be arranged by the officer in consultation with the treatment provider; the modality, duration, and intensity of treatment will be based on the risks and needs identified. The defendant will contribute to the costs of services rendered by means of co-payment, based on his ability to pay or the availability of third party payments.

9. The defendant shall cooperate in the collection of a DNA sample as directed by the Probation Officer, pursuant to the Revised DNA Collection Requirements, and Title 18, U.S. Code Section 3563(a)(9).

10. The defendant shall submit his person, property, house, vehicle, papers, computers (as defined in 18 U.S.C. Section 1030(e)(1)), other electronic communication or data storage devices, and media, to a search conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other residents or occupants that the premises may be subject to searches pursuant to this condition.

DEFENDANT: Joel Rivera-Alejandro
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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$ 600.00	$	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage
TOTALS	$ 0.00	$ 0.00	

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Joel Rivera-Alejandro
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SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☑ Lump sum payment of $ 600.00 due immediately, balance due

☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☑ The defendant shall forfeit the defendant's interest in the following property to the United States:
See page 9.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

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ADDITIONAL FORFEITED PROPERTY

URBAN: Plot of land located in the Las Cuevas Ward of the Municipality of Trujillo Alto, with a Surface area of FOUR HUNDRED SQUARE METERS AND FORTY-ONE HUNDREDTHS OF A METER (400.41m2), and bound, to the north, for twenty-two meters and seventy-eight hundredths of a meter, with subdivided lot number three; to the SOUTH, for twenty meters and twenty-one hundredths of a meter, with subdivided lot number One; to the EAST, for twenty meters and seventy-five hundredths of a meter, with land owned by Mrs. Mercedes Alejandro; and to the WEST, for sixteen meters and fifty hundredths of a meter, with land owned by Rafael Cancel.
Property No. 8821, Registered at Page 01 of Volume 810 of Trujillo Alto, 1st record entry. Property recorded on behalf of Carlos Rivera Alejandro and Idalia Maldonado Pefia.

URBAN: Plot of land located in the Las Cuevas Ward of the Municipality of Trujillo Alto, with a surface area of FOUR HUNDRED AND FOUR SQUARE METERS AND THIRTEEN HUNDRED TI-IS OF A METER (400.13m2), and bound, to the north, for twenty-four meters and seventy-six hundredths of a meter, with the remainder of the main property from which it was subdivided ; to the SOUTH, for twenty-two meters· and seventy-eight hundredths of a meter, with subdivided lot number Two; to the EAST, for fourteen meters and seventy hundredths of a meter, with land owned by Mercedes Alejandro ; and to the WEST, at two different alignments which added up to nineteen meters and thirty-one hundredths of a meter, with land owned by Rafael Cancel.
Property No. 8822, Registered at Page 31 of Volume 176 of Trujillo Alto, 1st record entry. Donated to Dolores Alejandro.

URBAN: REMAINDER OF A PLOT OF LAND LOCATED IN THE Las Cuevas Ward of the municipality of Trujillo Alto, with a surface area of approximately FIVE HUNDRED SQAURE METERS, and bound ; to the NORTH, with Messrs. Pagan and Amador; to the SOUTH, with subdivided lot Three; to the EAST, with Mercedes Alejandro and to the WEST, with Emilio Lopez, formerly Rafael Cancel.
Remainder: Property 4058 Page 228 back, Volume 91, Trujillo Alto, 4th record entry, Property recorded on behalf of Manuel Alejandro.

URBAN: Lot identified with number 6 in the s{rbdivision plan with an area of 1,934.72 square meters, equivalent 0.492 cuerdas. Bound to the NORTH, for 33.00 linear meters, with lot No. 7; to the SOUTH, for 52.00 linear meters with lot No. 5;; to the EAST, for 45.56 linear meters with lands belonging to the Estate of Evaristo Alexander; and top the WEST, for 48.76 linear meters, with a strip of land to be used as a public road.
Property No . 11421, Registered at Page 61 of Volume 788 of Trujillo Alto, 4th record entry. Property recorded on behalf of Carlos Rivera Alejandro and Idalia Maldonado Pena, at a share of 50% each.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff	)	
	)	
v.	)	**Docket. NO. 3:09-CR-165-CCC**
	)	
[1] JOEL RIVERA-ALEJANDRO,	)	
	)	
Defendant	)	
	)	

TO THE HONORABLE
CARMEN C. CEREZO
UNITED STATES DISTRICT JUDGE
FOR THE DISTRICT OF PUERTO RICO

MOTION TO DISMISS INDICTMENT FOR VIOLATION OF DEFENDANT'S RIGHT TO A SPEEDY TRIAL

COMES NOW the Defendant, [1] JOEL RIVERA-ALEJANDRO, by the undersigned counsel and hereby states, prays and requests as follows:

1. Defendant, through undersigned Counsel, hereby requests this Honorable Court to Dismiss the Indictment against Defendant Joel Rivera-Alejandro for violation of his Constitutional Right to a Speedy Trial.

I. Procedural Background

2. On May 5, 2009, Defendant Rivera-Alejandro, along with fifty-four (54) other individuals, was charged pursuant to a seven (7) count Indictment charging him with conspiracy to possess with the intention to distribute, and substantive counts of distributing, narcotic controlled substances in violation of Title 21 United States Code Sections 841(a)(1), 846 and 860. He was also charged with conspiracy to possess

firearms in furtherance of an alleged drug conspiracy, in violation of Title 18 United States Code Section 924(o).

3. On June 8, 2009, Defendant Rivera-Alejandro was arrested and presented before a U.S. Magistrate, where he was given a copy of the Indictment against him. (D.E. #291)
4. Defendant was not arraigned until July 1, 2009, when he was ordered detained without bail pending trial. (D.E. #397).
5. On September 9, 2009, this Honorable Court set the first trial date for the case to start on February 23, 2010, approximately nine months after defendant's indictment. (D.E. #507)
6. On December 14, 2009, the Government filed a joint motion for extension of time as to the filing of Change of Plea motions; there was no request to continue the trial date. (D.E. #599)
7. On December 23, 2009, the Court granted the joint motion and decided, sua sponte, to vacate the trial date. (D.E. #623)
8. On December 23, 2009, the Court reset the trial date to March 30, 2010. (D.E. #628)
9. On March 24, 2010, the Court vacated the trial date based on pending Change of Plea Motions filed by co-defendants (no finding that the ends of justice were served by postponing the trial of remaining defendants). (D.E. #756)
10. On July 20, 2010, the Court reset the trial date for September 9, 2010. (D.E. #1132)
11. On September 3, 2010, Defendant's Counsel filed a motion to continue trial. (D.E. #1299)

12. On September 7, 2010, the Court vacated the trial date, based in part on defendant's motion, but mostly based on the motions of three other co-defendants. (D.E. #1316)
13. Fourteen months elapsed between the Court's Order and the next Order setting a trial date.
14. On November 17, 2011, the Court ordered a new trial date for December 7, 2011. (D.E. #1747)
15. On November 30, 2011, the Court resets the trial date for January 7, 2012. (D.E. #1763)
16. On December 15, 2011, approximately thirty-one (31) months after his arrest, Defendant Rivera-Alejandro filed an Informative Motion with the Court requesting the "Court's intervention and assistance in instructing attorney [deleted] to meet with and file the following pleadings to the Honorable Court..." **The Defendant also stated in no uncertain terms that, "[t]he defendant wishes to prepare for trial..."** [emphasis added]. (D.E. #1778)
17. On January 20, 2012, Defendant's Counsel filed a Motion to Withdraw based on dire family circumstances. (D.E. #1829)
18. On January 30, 2012, the Court vacated the trial date due to pending Change of Plea motions filed by co-defendants 5 and 11. (D.E. #1833)
19. On March 9, 2012, this Honorable Court NOTED defendant's letter and GRANTED Counsel's request to withdraw, ordering the Clerk to appoint new counsel. (D.E. #1880)
20. On March 20, 2012, new Counsel entered his appearance on behalf of the defendant. (D.E. #1894)

21. Due to incompatibility issues between the Defendant and his newly-appointed Counsel, new Counsel filed a Motion to Withdraw within two weeks. (D.E. #1903)
22. On April 25, 2012, this Honorable Court denied Counsel's Motion to Withdraw. (D.E. #1932)
23. On April 27, 2012, the Court set a Trial Date for June 14, 2012. (D.E. #1939)
24. On June 1, 2012, Defendant's Counsel filed a Motion to Continue in this case. (D.E. #1993)
25. On June 11, 2012, this Honorable Court vacated the trial date and reset it for August 14, 2012. The Court based its decision partly on Defendant's motion, but mostly on co-defendant Alexis Rivera-Alejandro's motion to continue due to his knee surgery and his attorney's participation in another federal trial. (D.E. #2011 and 2012)
26. On July 31, 2012, Defendant's Counsel filed a Second Motion to Continue the trial for 40 days (which would have set a new trial for September 24, 2012). (D.E. #2080)
27. On August 6, 2012, this Honorable Court GRANTED Defendant's Second Motion to continue and vacated the trial without setting a new trial date. (D.E. #2099)
28. On August 29, 2012, Defendant's Counsel filed a Second Motion to Withdraw as Defendant's Attorney. (D.E. #2146)
29. On December 20, 2012 (113 days after Counsel filed his motion), this Honorable Court again DENIED Counsel's request (D.E. #2225) and set a new trial date for February 28, 2013. (D.E. #2230)
30. On February 7, 2013, Defendant's Counsel filed a Third Motion to Withdraw as Defendant's Attorney. (D.E. #2258)

31. On February 12, 2013, Defendant filed a Motion to Appoint Counsel, again stating that "New Counsel be appointed **in order to prepare adequately for trial.**" [emphasis added]. (D.E. #2268)

32. On February 15, 2013, the United States filed a Motion Requesting the Setting of a Status Conference in Lieu of Trial, wherein the government joined in supporting defendant's request to allow counsel to withdraw and appoint new counsel. (D.E. #2271)

33. On February 22, 2013, the Court vacated the trial date and has not yet set a new date. (D.E. #2278)

34. On February 27, 2013, this Honorable Court GRANTED Defendant's Motion. (D.E. #2285)

35. On February 28, 2013, the undersigned was appointed by this Honorable Court to take over the representation of Defendant and the undersigned entered his appearance on March 4, 2013. (D.E. #2293)

II. Legal Argument

36. The Speedy Trial Act ("STA") requires that a defendant who pleads not guilty to an offense be afforded a trial within 70-days of the date he/she is publicly charged by information or indictment or appears before a judicial officer to face said charges. *Title 18 U.S.C. §3161.* The 70-day Speedy Trial Act clock, however, can be tolled by virtually any occurrence on the case docket, as listed in 18 U.S.C. §3161 (h).

37. Delays excused under the Speedy Trial Act, however, cannot trump defendant's Constitutional guarantee to a "speedy trial" as set forth under the Sixth Amendment.

See United States v. Koller, 956 F.2d 1408, 1413 (7th Cir.1992). Section 3173 of the STA states that "[n]o provision of this chapter shall be interpreted as a bar to any claim of denial of speedy trial as required by amendment VI of the Constitution." 18 U.S.C. § 3173 (1985); *See also United States v. Mitchell,* 723 F.2d 1040, 1049 (1st Cir.1983).

38. In *U.S. v. Dowdell*, 595 F.3d 50 (1st Cir. 2010), the First Circuit Court of Appeals succinctly described the applicable remedy and four factors enumerated by the U.S. Supreme Court when considering Speedy Trial violations:

> The Sixth Amendment of the United States Constitution, however, provides that, "every defendant shall enjoy the right to speedy and public trial." U.S. Const. amend. VI. **If the government violates this constitutional right, the criminal charges must be dismissed**. *Strunk v.United States,* 412 U.S. 434, 439-40, 93 S.Ct. 2260, 37 L.Ed.2d 56 (1973). To determine whether a violation has occurred, we use the four-part balancing test established in *Barker v. Wingo,* 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972), which requires a weighing of: (1) the length of the delay, (2) the reasons for the delay, (3) the defendant's assertion of his right, and (4) prejudice to the defendant resulting from the delay. *Id.* at 530, 92 S.Ct. 2182. [emphasis added]
> *Dowdell*, 595 F.3d at 60.

39. In analyzing the case at bar under the magnifying glass of *Barker,* Defendant notes that all four factors weigh in favor of dismissing the current Indictment.

A. Length of Delay

40. The Supreme Court has said that "the lower courts have generally found postaccusation delay `presumptively prejudicial' at least as it approaches one year." *Doggett v. United States,* 505 U.S. 647, 652 n. 1, 112 S.Ct. 2686, 2691 n. 1, 120 L.Ed.2d 520 (1992) (citations omitted); *see also United States v. King,* 909 F.Supp.

369, 372 (E.D.Va.1995). *See, e.g., Santiago-Beceril,* 130 F.3d at 21-22 (holding that fifteen month delay in case was presumptively prejudicial); *Koller,* 956 F.2d at 1414 (holding that an eight and one-half month delay was enough to warrant further inquiry); *Colombo,* 852 F.2d at 24 (holding that a twenty-four month period was long enough to be presumptively prejudicial); *King,* 909 F.Supp. at 372 (holding that a thirty-one month delay was sufficient to trigger the *Barker* test).

41. The "length of delay" in this case is now reaching close to forty-seven (47) months and growing. Given the Courts' prior holdings that a 15-month, 24-month and 31-month delay was presumptively prejudicial, defendant's current forty-seven (47) month delay easily meets the first factor.

B. Reasons for the Delay

42. The second factor, the reason(s) for the delay, has been called, "the focal inquiry." *United States v. Sears, Roebuck & Co.,* 877 F.2d 734, 739 (9th Cir.1989) (citation omitted). The inquiry into causation involves a sliding scale: deliberately dilatory tactics must be weighed more heavily against the state than periods of delay resulting from negligence. *Rashad v. Walsh,* 300 F. 3d 27, 34 (1st Cir. 2002). To the extent that valid reasons cause delay, the delay does not count against the state. So too delay that is caused by the defendant. *See Davis v. Puckett,* 857 F.2d 1035, 1040-41 (5th Cir.1988).

43. During the 47 months since defendant's indictment, there are periods of delay that are directly attributable to the defendant. By subtracting the period of time for each delay attributable to the defendant, the Court is left with a period of time that is either neutral or attributable to the government for its failure to timely prosecute the case.

44. Defendant's Motion at D.E. #1933 resulted, in part, on the Court vacating the trial date from June 11, 2012 to August 14, 2012. (D.E. #2011 and 2012) This represents a two-month delay attributable to defendant.

45. Although Defendant's Motion to Continue at D.E. #2080 only requested 40 days to prepare for trial, it resulted in the court vacating the trial date from August 14, 2012 and resetting to February 28, 2013. (D.E. #2099 and 2230) This represents approximately 1.5 months attributable to Defendant.

46. Finally, Defendant's Motions at D.E. #2258 and #2268, and U.S. Motion at D.E. #2271 resulted in the appointment of new counsel and the trial date being vacated on February 28, 2013 *sine die*. (D.E. #2278) This represents a neutral delay.

47. Only one other delay came about as part of a joint motion filed by the government and the defense at D.E. #599 on December 23, 2009, which resulted in a 1 month delay from February 23, 2010 to March 30, 2010. (D.E. #623)

48. The Court's delays in each of the following instances are attributable to the United States for its failure to timely prosecute the defendant, to the extent that each delay exceeded 30 days:

    a. 3/24/10 – DE 756 – Court vacates 3/30/10 trial due to pending COP motions

    b. 7/20/10 – DE 1132 – Trial reset for 9/9/10 – [5 of 6 months attributable to US]

    c. 9/7/10 – DE 1316 – Court vacates 9/9/10 trial

    d. 11/17/11 – DE 1747 – Trial reset for 12/7/11 [14 of 15 months attrib to US]

    e. 11/30/11 – DE 1763 – Court resets for 1/31/12 [1 of 2 months attrib to US]

    f. 1/30/12 – DE 1833 – Court vacates 1/31/12 trial due to COP defs 5 & 11

    g. 4/27/12 – DE 1939 – Court resets for 6/14/12 [3 of 4 months attrib to US]

h. 6/11/12 – DE 2011 – Court vacates due to defendant's motion

i. 6/11/12 – DE 2012 – Court resets for 8/14/12 [0 of 2 months attrib to US]

j. 8/6/12 – DE 2099 – Court vacates due to defendant's motion (request 40 days]

k. 12/20/12 – DE 2230 – Court resets for 2/28/13 [4.5 of 6 months attrib to US]

l. 2/22/13 – DE 2278 – Court vacates due to both defendant and US motions

49. Based on the foregoing analysis, and taking into account reasonable delays related to pending motions before the court, the amount of delay attributable to each party is as follows: Out of 47 months since defendant's indictment, the defendant is responsible for 3.5 months of delays; the government is responsible for 27.5 months of delays and there are approximately 16 months of delays that are neutral as between the parties.

III. Defendant's Request for Trial

50. Defendant did not sit on his rights in this case and has been diligent in pursuing a trial. When his first attorney was unable to visit defendant due to unexpected circumstances, he sought the court's assistance in preparing his case for trial.

51. It is undisputed that Defendant wrote to this Honorable Court on or about December 10, 2011 (date-stamped received by the Court on 12/13/2011) to request an Investigator and to express his desire to prepare for trial. (D.E. #1778)

52. Seventeen (17) months have elapsed since Defendant apprised the Court of his desire to proceed to trial and the prejudice he is suffering as a result of delay.

IV. Prejudice Resulting from Delay

53. The fourth, and final, factor "should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. Th[e] Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to

minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired." *Barker,* 407 U.S. at 532, 92 S.Ct. at 2193 (footnote omitted); *see also Koller,* 956 F.2d at 1414.

54. The *Barker* Court went on to discuss the disadvantages of lengthy pretrial incarceration for the accused who cannot obtain his release. *See Barker,* 407 U.S. at 532-33, 92 S.Ct. at 2193-94. *Moore v. Arizona*, 414 U.S. 25 (1973), however, more fully discussed the prejudice factor enunciated in *Barker*. In *Moore*, the court stated:

> Moreover, prejudice to a defendant caused by delay in bringing him to trial is not confined to the possible prejudice to his defense in those proceedings. Inordinate delay, "wholly aside from possible prejudice to a defense on the merits, **may `seriously interfere with the defendant's liberty, whether he is free on bail or not, and . . . may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and his friends.'** *United States* v. *Marion,* 404 U. S. 307, 320 (1971). These factors are more serious for some than for others, but they are inevitably present in every case to some extent, for every defendant will either be incarcerated pending trial or on bail subject to substantial restrictions on his liberty." *Barker* v. *Wingo, supra,* at 537 (WHITE, J., concurring). [emphasis added]
> *Moore*, 414 at 27.

55. In the case at bar, Defendant not only asserted his Speedy Trial right on December 10, 2011, he also expressed to the court his immediate sense of prejudice due to the extended time that he had been incarcerated.

56. In his letter, Defendant states that he requires the court's assistance to instruct his attorney to file a motion to obtain the services of a private investigator and a motion for the court to approve visitation rights with his mother and co-defendant Dolores Alejandro-Rodriguez. He goes further to express how he has been harmed in that, "it has been 31 months since I have seen my mother." See, Defendant's Informative Motion at D.E. #1778.

57. Clearly, the 47 months of delay suffered by Defendant in this case has not only caused significant harm to his ability to obtain an investigator to gather evidence and assist in the preparation of his defense, but it has cast a serious doubt on defendant's ability to now locate any potentially exculpatory evidence that may have existed on or before May 5, 2009.

58. Defendant's prolonged incarceration has significantly curtailed his associations with family and friends, drained his resources, eliminated his employment opportunities and caused irreparable harm to his psychological and physical well being.

59. In addition to the current 47 month delay, this Honorable Court should also consider the total burden that has been placed on defendant's life due to the government's repeated and extended interference with defendant's liberty.

60. As previously noted by the United States in its *Motion Requesting the Setting of a Status Conference in Lieu of Trial*, "this particular defendant was a former Federal defendant.... This defendant was acquitted from those charges..." *U.S. Motion* at page 2. (D.E. #2271)

61. In that prior case noted by the United States (*U.S. v. Acosta-Martinez, et.al.* 3:99-cr-00444-JAG), this defendant initially appeared before a U.S. magistrate on March 4, 1999 and was ordered detained without bail pending trial on March 19, 1999. Defendant then spent the next fifty-three (53) months of his life awaiting a jury verdict, which ultimately found him not guilty of the charges on July 31, 2003.

62. Thus, Defendant is keenly aware of the unjust delays that inure from a slow federal criminal justice system that purports to offer "a speedy and public trial" and that supposedly guarantees a trial within "70 days." The sad truth of the matter is that the

United States government has now denied this defendant his liberty, his ability to engage in employment and earn income, his ability to associate with his family and friends, and his ability to live free from anxiety and public obloquy for a combined period of approximately 100 months.

63. The prejudice resulting from the delays in Defendant's case are patent and obvious. Extended administrative detentions such as the one in this case were clearly abhorred by the Founding Fathers when the Sixth Amendment to the U.S. Constitution was passed and it remains just as much of an outrageous abuse of government authority today as it did then. Simply put, "Justice delayed is justice denied."

CONCLUSION

WHEREFORE, the Defendant respectfully requests that this Honorable Court GRANT this Motion to Dismiss Indictment with Prejudice for violation of Defendant's Right to a Speedy Trial.

RESPECTFULY SUBMITTED,

JOEL RIVERA-ALEJANDRO
By Counsel

By: **/s/Juan E. Milanés**
Juan E. Milanés, Esq.
Counsel for Defendant Joel Rivera-Alejandro
PR BAR No. 225701
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Email: MilanesLaw@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the counsel(s) of record.

At Reston, Virginia, this 17th day of April, 2013

By: **/s/Juan E. Milanés**
Juan E. Milanés, Esq.
Counsel for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff	)	
	)	
v.	)	**Docket. NO. 3:09-CR-165-CCC**
	)	
[1] JOEL RIVERA-ALEJANDRO, et. al.	)	
	)	
Defendant	)	
	)	

TO THE HONORABLE
CARMEN C. CEREZO
UNITED STATES DISTRICT JUDGE
FOR THE DISTRICT OF PUERTO RICO

SECOND NOTICE TO GOVERNMENT OF DEFENDANT'S ASSERTION OF SPEEDY TRIAL RIGHT

COMES NOW the Defendant, [1] JOEL RIVERA-ALEJANDRO, by the undersigned counsel and presents this, his Second Notice to Government of Defendant's Assertion of Speedy Trial Right, and Defendant states, prays and requests the Court to NOTE as follows:

1. On May 5, 2009, Defendant Joel Rivera-Alejandro, along with fifty-four (54) other individuals, was charged pursuant to a seven (7) count Indictment charging him with conspiracy to possess with the intention to distribute, and substantive counts of distributing, narcotic controlled substances in violation of Title 21 United States Code Sections 841(a)(1), 846 and 860. He was also charged with conspiracy to possess firearms in furtherance of an alleged drug conspiracy, in violation of Title 18 United States Code Section 924(o). (D.E. #1)
2. On April 27, 2013, Defendant filed a Motion to Dismiss for violation of Defendant's Speedy Trial Right (D.E. #2318), which was subsequently joined by other co-

defendants. Defendant's Motion to Dismiss noted that the Defendant previously filed a PRO SE Motion with the Court asserting his right to a Speedy Trial on December 15, 2011. (D.E. #1778)

3. On July 19, 2013, a Report and Recommendation ("R&R") was issued recommending that Defendant's Motion to Dismiss be denied. (D.E. #2416)
4. On August 1, 2013, Defendant timely objected to the R&R (D.E. #2423) and on August 26, 2013, the Court granted the United States' Motion for Extension of time to respond to Defendant's Motion's to Suppress at D.E. #2420, 2421 and 2424.
5. Despite Defendant's objections, on October 15, 2013, this Honorable Court issued an Order finding that Defendant's Speedy Trial Rights had not been violated. (D.E. #2457)
6. Thereafter, on October 22, 2013, this Honorable Court set a Trial Date for February 4, 2014. (D.E. #2463)
7. Although a trial date has been set and Defendant prepares for trial, there remain pending matters before this Honorable Court that should be resolved prior to trial. (D.E. #2474, 2476 and 2479)
8. As noted in the afore-mentioned R&R dated July 19, 2013, "when the defendant objects to a delay, the frequency and force of the objections is more important than requiring a purely pro forma objection."
9. Given the extraordinary delay in reaching a trial date in the above-captioned case, defendant's objections to continuing delays, and the fact that Defendant is entering upon his 56th month of pre-trial detention, Defendant hereby gives the Government Specific and Forceful Notice that he hereby OPPOSES any Motions to Continue,

Motions for Extensions of Time or any further delays to the trial date currently set by this Honorable Court for February 4, 2014.

10. Moreover, Defendant avers that this SECOND NOTICE TO GOVERNMENT OF DEFENDANT'S ASSERTION OF HIS SPEEDY TRIAL RIGHT, requires no responsive pleading and may not be counted to exclude time against the Speedy Trial Act clock.

WHEREFORE, the Defendant respectfully requests that this Honorable Court NOTE Defendant's Second Notice to Government and set a pre-trial conference on January 24, 2014 to resolve any outstanding Motions and pretrial matters before the Court.

RESPECTFULY SUBMITTED,

JOEL RIVERA-ALEJANDRO
By Counsel

By: **/s/Juan E. Milanés**
Juan E. Milanés, Esq.
Counsel for Joel Rivera-Alejandro
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the counsel(s) of record.

At San Juan, this 31st day of December, 2013

By: **/s/Juan E. Milanés**
Juan E. Milanés, Esq.
Counsel for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff	)	
	)	
v.	)	**Docket. NO. 3:09-CR-165-CCC**
	)	
[1] JOEL RIVERA-ALEJANDRO, et. al.	)	
	)	
Defendant	)	
	)	

TO THE HONORABLE
CARMEN C. CEREZO
UNITED STATES DISTRICT JUDGE
FOR THE DISTRICT OF PUERTO RICO

THIRD NOTICE TO GOVERNMENT OF DEFENDANT'S ASSERTION OF SPEEDY TRIAL RIGHT

COMES NOW the Defendant, [1] JOEL RIVERA-ALEJANDRO, by the undersigned counsel and presents this, his Third Notice to Government of Defendant's Assertion of Speedy Trial Right, and Defendant states, prays and requests the Court to NOTE as follows:

1. On May 5, 2009, Defendant Joel Rivera-Alejandro, along with fifty-four (54) other individuals, was charged pursuant to a seven (7) count Indictment charging him with conspiracy to possess with the intention to distribute, and substantive counts of distributing, narcotic controlled substances in violation of Title 21 United States Code Sections 841(a)(1), 846 and 860. He was also charged with conspiracy to possess firearms in furtherance of an alleged drug conspiracy, in violation of Title 18 United States Code Section 924(o). (D.E. #1)
2. On April 27, 2013, Defendant filed a Motion to Dismiss for violation of Defendant's Speedy Trial Right (D.E. #2318), which was subsequently joined by other co-

defendants. Defendant's Motion to Dismiss noted that the Defendant previously filed a PRO SE Motion with the Court asserting his right to a Speedy Trial on December 15, 2011. (D.E. #1778)

3. On October 22, 2013, this Honorable Court set a Trial Date for February 4, 2014. (D.E. #2463)
4. On December 31, 2014, Defendant filed his Second Notice to Government of his assertion of his Speedy Trial Right. (D.E. #2499)
5. On January 31, 2014, this Honorable Court VACATED the jury trial set for February 4, 2014. (D.E. #2533)
6. On May 9, 2014, undersigned Counsel filed a Notice of his unavailability during the week of July 24 to August 4 to attend to family obligations. (D.E. #2701)
7. On May 14, 2014, this Honorable Court RESET jury trial for July 17, 2014. (D.E. #2712)
8. Undersigned Counsel respectfully informs this Honorable Court that he has taken steps to cancel all family obligations that conflict with the new trial date to attend to the rescheduled jury trial.
9. Defendant avers that this THIRD NOTICE TO GOVERNMENT OF DEFENDANT'S ASSERTION OF HIS SPEEDY TRIAL RIGHT, requires no responsive pleading and may not be counted to exclude time against the Speedy Trial Act clock.

WHEREFORE, the Defendant respectfully requests that this Honorable Court NOTE Defendant's THIRD Notice to Government of his assertion of his Speedy Trial Right.

RESPECTFULY SUBMITTED,

JOEL RIVERA-ALEJANDRO
By Counsel

By: **/s/Juan E. Milanés**
Juan E. Milanés, Esq.
Counsel for Joel Rivera-Alejandro
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Email: MilanesLaw@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the counsel(s) of record.

At San Juan, this 28th day of May, 2014

By: **/s/Juan E. Milanés**
Juan E. Milanés, Esq.
Counsel for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA

v.

[1] JOEL RIVERA-ALEJANDRO,

Defendant.

Criminal No. 09-165 (CCC)

REPORT AND RECOMMENDATION

Joel Rivera-Alejandro is charged in a seven-count indictment with conspiracy to distribute controlled substances, aiding and abetting the distribution of heroin, cocaine base, cocaine, and marijuana, and conspiracy to possess firearms in furtherance of drug trafficking crimes, in addition to narcotics forfeiture allegations. *See* Docket No. 3 (hereinafter "Indictment"). Rivera-Alejandro was indicted, along with fifty-four co-defendants, on May 5, 2009. He was arrested on June 8, 2009. His trial has been rescheduled or vacated eight times. Rivera-Alejandro now moves to dismiss the indictment for violation of his constitutional right to a speedy trial. Docket No. 2318. The United States opposed. Docket No. 2345. The court referred this matter for report and recommendation. Docket No. 2381. Rivera-Alejandro's motion should be **DENIED**.

BACKGROUND

Rivera-Alejandro was indicted on May 5, 2009 along with fifty-four other individuals. Indictment. He was arrested on June 8, 2009, and an arraignment and detention hearing was set for June 11, 2009. Docket No. 291. The court appointed attorney Luz M. Ríos-Rosario to represent him that day. Docket No. 303. Ríos-Rosario had a scheduling conflict and Rivera-Alejandro had informed her he wanted another attorney to represent him, so the court granted Rivera-Alejandro's motion to continue the arraignment and detention hearing to June 22, 2009. Docket No. 306. Attorney Ríos-Rosario was not present at the hearing due to personal reasons, so the hearing was

rescheduled again for July 1, 2009. Docket No. 368. At the July 1, 2009 hearing, Rivera-Alejandro was ordered detained pending trial. Docket No. 393.

On September 9, 2009, the court issued a scheduling order setting trial for February, 21, 2010. Docket No. 507. On December 23, 2009, the court granted the government and the lead defense attorneys' joint motion for extension of deadlines and vacated the February 23, 2010 trial date, setting a new trial date for March 30, 2010. Docket Nos. 627, 628. Six days before the trial date, due to the pendency of eleven change-of-plea motions, the trial date was vacated. Docket No. 756. On July 20, 2010, the trial for the first group of defendants, which included Rivera-Alejandro, was scheduled for September 9, 2010. Docket No. 1132.

Six days before trial, on September 3, 2010, Rivera-Alejandro through counsel moved to continue the trial date in the interest of justice, asserting that additional time was needed to prepare for trial. Docket No. 1298. The motion was granted on September 7, 2010. Docket No. 1316. The court then spent next thirteen months addressing numerous motions filed by Rivera-Alejandro's co-defendants. On November 17, 2011, the trial was reset for December 7, 2011. Docket No. 1747.

On November 26, 2011, co-defendant Carlos Rivera-Alejandro moved to continue the jury trial. Docket No. 1754. On November 30, 2011, Rivera-Alejandro, through attorney Ríos-Rosario, moved to server his trial, to withdraw as attorney, and to continue the trial date to February or March 2012. Docket No. 1761. Ríos-Rosario said that, due to personal reasons, she had been unable to satisfactorily prepare for trial. *Id.* at 2. She also requested to withdraw as counsel. *Id.* The court ruled the motions moot in light of his codefendant's motion to continue trial, which had been granted that same day. Docket No. 1763. Trial was rescheduled for January 31, 2012. *Id.*

On December 15, 2011, Rivera-Alejandro, filed a *pro se* motion for intervention with counsel Ríos-Rosario. He stated that he had been unable to get in touch with her and was interested in preparing for trial. Docket No. 1778. On January 24, 2012, attorney

Ríos-Rosario renewed her motion to withdraw as attorney, citing personal reasons. Docket No. 1829. Meanwhile, codefendants in Rivera-Alejandro's trial group moved to change their pleas to guilty, and the trial date was vacated again on January 30, 2012. Docket No. 1833.

On March 9, 2012, the court noted Rivera-Alejandro's "motion to intervene with counsel" and granted Ríos-Rosario's motion to withdraw as attorney. Docket No. 1880. On March 14, the court appointed attorney Manuel E. Moraza-Ortiz to represent Rivera-Alejandro. Docket No. 1894. Moraza-Ortiz moved to withdraw as counsel less than three weeks later, stating that Rivera-Alejandro had contacted another lawyer and wanted the other lawyer to represent him. Docket No. 1903. On April 25, 2012, the court denied Moraza-Ortiz's motion, stating Rivera-Alejandro could not choose a particular CJA attorney and that no substantial reasons were provided for removal. Docket No. 1932. Two days later, trial was scheduled for June 14, 2012. Docket No. 1939.

On June 1, 2012, Rivera-Alejandro, through attorney Moraza-Ortiz, requested a sixty-day continuance to better prepare for trial given the file's extensiveness. Docket No. 1993. The motion was granted on June 11, 2012, and trial was rescheduled for August 14, 2012. Docket Nos. 2011, 2012. On July 31, 2012, Rivera-Alejandro requested another continuance of the trial date for the same reasons, stating defense witness interviews were pending. Docket No. 2080. The motion was granted as well on August 6, 2012, and the trial date was vacated. Docket No. 2099.

On August 29, 2012, attorney Moraza-Ortiz moved to withdraw again, this time indicating that Rivera-Alejandro would not cooperate with his defense and wanted an "older" attorney. Docket No. 2146. The court denied the motion on December 20, 2012, reminding Rivera-Alejandro he could not choose his court-appointed attorney and instructing him to cooperate with his designated attorney. Docket No. 2225 at 3. The court scheduled the trial for February 28, 2013. Docket No. 2230.

On February 7, 2013, Moraza-Ortiz moved to withdraw for the third time, providing the same reasons given in his second motion. Docket No. 2258. On February 12, 2013, Rivera-Alejandro moved *pro se* to appoint new counsel, claiming that Moraza-Ortiz was not actively working on his case and this would prejudice his defense at trial. Docket No. 2268. Three days later, the government moved for a status conference to be held in lieu of trial citing as reasons Rivera-Alejandro's lack of cooperation with counsel and some of the co-defendants' incarceration in the mainland United States. Docket No. 2271. The court vacated the February 28, 2013 trial date on February 22, 2013. Docket No. 2278.

On February 27, 2013, the court granted the motions to withdraw, and appointed Juan E. Milanés-Sánchez the next day. Docket Nos. 2285, 2293. Rivera-Alejandro brought this motion on April 17, 2013, along with a motion to suppress evidence seized on January 2009. Docket Nos. 2318 and 2319. A suppression hearing was held on January 9, 2013. Docket No. 2411. A new trial date has not been set at this time.

DISCUSSION

Rivera-Alejandro argues that the forty-seven-month delay since the return of the indictment has deprived him of his Sixth Amendment right to a speedy trial. Docket No. 2318 at 1. The speedy trial right "attaches upon an individual's indictment, arrest or official accusation." *United States v. Colombo*, 852 F.2d 19, 23 (1st Cir. 1988) (citing *United States v. MacDonald*, 456 U.S. 1, 6 (1982); *United States v. Marion*, 404 U.S. 307 (1971)). "If the government violates this constitutional right, the criminal charges must be dismissed." *United States v. Dowell*, 595 F3d 50, 60 (1st Cir. 2010) (citing *Strunk v. United States*, 412 U.S. 434, 439-40 (1973)). To decide a Sixth Amendment speedy-trial challenge, four factors must be weighed: (1) the length of the delay, (2) the reason(s) for the delay, (3) the defendant's assertion of the right, and (4) the prejudice the delay has caused the defendant. *Barker v. Wingo*, 407 U.S. 514, 530 (1972); *United States v. Santiago-Becerril*, 130 F.3d 11, 21 (1st Cir. 1997). No one factor alone is either

necessary or sufficient to support the finding of a Sixth Amendment violation; rather, the factors are related and must be considered together with such other circumstances as may be relevant. *Barker*, 407 U.S. at 533. I analyze each factor in turn.

I. Length of the Delay

The court must first evaluate whether (1) there is a delay at all and (2) whether the length of the delay crosses the threshold from ordinary to "presumptively prejudicial." *Doggett v. United States*, 505 U.S. 647, 651-52 (1992) (quoting *Barker*, 407 U.S. at 530-31). Generally, a delay of more than one year appears presumptively prejudicial. *United States v. Muñoz-Amado*, 182 F.3d 57, 61 (1st Cir. 1999) (citing *Doggett*, 505 U.S. at 652 n. 1). Simpler cases, such as an ordinary street crime, will have a lower threshold for presumptive prejudice than more complex cases, such as serious conspiracy. *Id.* at 62 (citing *Barker*, 407 U.S. at 531). Therefore, the length of delay that triggers the speedy trial inquiry will ultimately depend upon the circumstances of the case; the more serious and complex the crime, the longer the delay that may be tolerated. *Barker*, 407 U.S. at 530-31 (eight-and-a-half year delay triggered review in a murder case); *see, e.g.*, *Santiago-Becerril*, 130 F.3d at 21 (fifteen-month delay triggered review in a three-defendant four-count carjacking and firearms action); *Colombo*, 852 F.2d at 24 (twenty-four-month triggered review in a conspiracy to defraud the government and criminal tax law violations action); *Muñoz-Amado*, 182 F.3d at 62 (nineteen-month delay triggered in drug conspiracy case); *United States v. Casas*, 425 F.3d 23, 36 (1st Cir. 2005) (forty-one-month delay triggered in same). "Although the presumption of prejudice resulting from a long delay cannot alone carry a Sixth Amendment claim without regard to the other *Barker* criteria, [...] its importance increases with the length of delay." *Doggett*, 505 U.S. at 656 (citation and quotation omitted) (six-year delay presumptively prejudicial).

Here, the government charged Rivera-Alejandro in a seven-count indictment with conspiracy to distribute controlled substances, aiding and abetting the distribution of heroin, cocaine base, cocaine, and marijuana, and conspiracy to possess firearms in furtherance of drug trafficking crimes, in addition to narcotics forfeiture allegations. *See* Indictment. Rivera-Alejandro purportedly owned, led, and supervised a drug trafficking operation which included fifty-four indicted co-defendants and spanned over a four-year period. Indictment at 5, 14. The government alleges that the defendant used and supplied firearms for the operation's protection, purchased, repackaged, distributed and sold a variety of controlled substances, organized the sellers and other members of the operation into shifts depending on their role, and developed code language to facilitate communication and secrecy. *See* Indictment. While the case certainly is large and complex, the delay here is over three times the threshold for presuming prejudice. The first factor therefore triggers further analysis and weighs against the government.

II. Reasons for the Delay

The reason for the delay is the second factor. *Barker*, 407 U.S. at 531. Rivera-Alejandro alleges that the government has failed to timely prosecute him without any good reason. Docket No. 2318 at 8, ¶ 48. Deliberate delay tactics by the government will weigh more heavily against the government than a more neutral reason such as negligence or overcrowded courts, though the government bears the ultimate responsibility for these circumstances as well. *Barker*, 407 U.S. at 531. On the other hand, "a valid reason, such as a missing witness, should serve to justify appropriate delay." *Id.* In a multi-defendant case, if the defendants cause the delay by filing numerous pretrial motions, the court looks to the number of pretrial motions filed and whether the court addressed the motions in a timely manner to determine whether the court violated the defendants' right to a speedy trial. *See Casas*, 425 F.3d at 33-34. The

size and complexity of the case may by itself justify such a delay. *United States v. Negrón-Olivella*, CRIM. 10-444 FAB, 2011 WL 3422779 (D.P.R. Aug. 4, 2011).

In *Casas*, a sixty-defendant six-count drug conspiracy case, the court evaluated the defendants' speedy trial violation argument under the Speedy Trial Act ("STA") and under the Sixth Amendment protections. *Casas*, 425 F.3d at 30-36. Even though the STA provisions are not controlling here since Rivera-Alejandro does not allege a STA violation, they are persuasive and help clarify the effect of the co-defendants' motions on a defendant's right to a speedy trial. Under the STA, "any defendant's motion resulting in excludable time toll[s] the STA clock for his codefendants." *Casas*, 425 F.3d at 31 (quoting *Santiago-Becerril*, 130 F.3d at 19 (collecting cases)); *see* 18 U.S.C. § 3161(h)(1)(F), (h)(7). Subsequently, when the court evaluated the pretrial motions filed under the Sixth Amendment protections, it balanced the number of motions to continue, change of pleas, and motions to withdraw attorney the defendants filed with the court's timely management of the motions in "mov[ing] the case along to trial." *Casas*, 425 F.3d at 33-34. There, one appellant-defendant had filed thirteen pretrial motions, another nineteen, and a third one had filed twenty-eight pretrial motions. *Id.* Because the court was diligent in addressing the defendants' numerous motions, the court in *Casas* weighed the reasons for the delay factor against the defendants.

Here, the trial date has been postponed eight times for varying reasons. *See* Docket Nos. 627, 628, 756, 1132, 1298, 1747, 1757, 1763, 1833, 1939, 1993, 2011, 2012, 2080, 2099, 2230, 2271, 2278. Rivera-Alejandro argues that a majority of the delay is attributable to the government. Docket No. 2318 at 8-9, ¶¶ 48. He calculates three-and-a-half months of delay as attributable to his motions and sixteen "neutral" months, leaving the government responsible for twenty-seven-and-a-half months of delays using quasi-STA calculations. *Id.*, ¶ 49. But many of the delays that Rivera-Alejandro claims are neutral or the government's responsibility are due to the resolution of pretrial matters concerning him or his co-defendants. Rivera-Alejandro has filed a total of fifteen

motions. *See* Docket Nos. 304, 1298, 1761, 1778, 1829, 1903, 1993, 2080, 2146, 2258, 2268, 2307, 2308, 2318, and 2319. Additionally, defendants here have collectively filed seventy-one motions to continue, and Rivera-Alejandro is responsible for five of them. *See* Docket Nos. 304, 1298, 1761, 1993, 2080. Defendants have also filed over thirty-one motions to withdraw or substitute counsel, seven of which are attributable to Rivera-Alejandro.[1] Over forty codefendants have filed change-of-plea motions, some of them more than once. These motions, added to miscellaneous motions including, but not limited to, motions to modify conditions of supervised release, motions to suppress, motions to seal or withdraw documents, and motions to withdraw guilty pleas, total well over two hundred pretrial motions. The numerous motions and the court's responsiveness and timeliness tilt the balance against the defendant.

III. Defendant's Assertion of His Right to a Speedy Trial

Next, the court considers Rivera-Alejandro's assertion of his speedy trial right. This factor "is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right." *Barker*, 407 U.S. at 531-32. Failure to assert the right "will make it difficult for a defendant to prove that he was denied a speedy trial." *Id.* at 532. When the defendant objects to a delay, the frequency and force of the objections is more important than requiring a purely pro forma objection. *Rashad v. Walsh*, 300 F.3d 27, 34 (1st Cir. 2002) (citing *Barker*, 407 U.S. at 529). If the accused has not himself caused the delay, failure to demand a speedy trial is simply "one of the factors to be considered in an inquiry into the deprivation of the right." If, however, the defendant caused the delay, standard waiver doctrine applies. *Barker*, 407 U.S. at 528-29. Likewise, "unreadiness to proceed to trial" counts against a defendant, even when he

[1] Attorney Ríos-Rosario moved for withdrawal twice (Docket Nos. 1761, 1829), attorney Moraza-Ortiz moved for withdrawal three times (Docket Nos. 1903, 2146, 2258), and Rivera-Alejandro, *pro se*, moved for intervention with counsel or removal twice (Docket Nos. 1778, 2268).

explicitly asserts his speedy trial right. *Rashad*, 300 F.3d at 40 (internal citations omitted).

Here, Rivera-Alejandro argues that he asserted his right in his December 2011 *pro se* motion for intervention with counsel Ríos-Rosario when he expressed his desire to prepare for trial. Docket No. 2318 at 9, ¶ 51; *see* Docket No. 1778 ("The defendant wishes to prepare for trial and can not [*sic*] stress the importance of mutual understanding and trust between a client and his attorney."). This is the only instance Rivera-Alejandro points to as proof that he wanted to proceed to trial. Rivera-Alejandro never objected to any of the continuances. After this instance of stating his intent to proceed to trial, the court granted Ríos-Rosario's motion to withdraw as attorney and appointed Moraza-Ortiz as counsel. Docket Nos. 1880, 1894. Rivera-Alejandro then refused to cooperate with counsel's defense preparations. *See* Docket Nos. 1903, 2146, 2258, 2268. Moreover, he was responsible for two of the continuances filed after December 2011 due to changes in counsel, and his lack of cooperation with counsel was cited as a reason in a third motion. His allegation now that he wanted to proceed to trial seems inconsistent with his behavior and readiness to actually proceed. These circumstances tip the balance against him as to this factor as well.

IV. Prejudice to the Defendant

Finally, the court assesses the prejudice to the defendant caused by the delay "in the light of the interests of defendants which the speedy trial right was designed to protect." *Barker*, 407 U.S. at 532 (footnote omitted). These interests are the interest (i) to prevent oppressive pretrial incarceration, (ii) to minimize anxiety and concern of the accused, and (iii) to limit the possibility that the defense will be impaired. *Id.* The defendant should point to the oppressive conditions that disrupt the interest to prevent oppressive pretrial incarceration. *See Casas*, 425 F.3d at 34. Also, since anxiety is a normal result of being charged with a criminal offense, the court should only consider undue pressures. *See id.* at 34-35. Similarly, when alleging that pretrial incarceration

impaired trial preparations, the defendant must point to the evidence or witnesses that have since become unavailable or whose memories have been compromised. *Id.* at 35-36. But asserting a particularized prejudice is not necessary to prove a denial of the speedy trial right. *Doggett*, 505 U.S. at 655-56 (citing *Barker*, 407 U.S. at 521, 532, 533). When a defendant is unable to articulate the harm caused by delay, the court will use the reason for the delay (the second *Barker* factor) to determine whether the defendant was presumptively prejudiced. *United States v. Hills*, 618 F.3d 619, 632 (7th Cir. 2010); *United States v. Mundt*, 29 F.3d 233, 236 (6th Cir. 1994) (rejecting Sixth Amendment argument where "[d]efendant's claim of prejudice is based [solely] on his broad assertion that the delay impaired his defense").

Here, Rivera-Alejandro alleges that he has been prejudiced as to all three interests outlined. Docket No. 2318 at 10-11, ¶¶ 55-57. Specifically, he claims that the extended pretrial incarceration has affected his relationships with family and friends, drained his resources, eliminated employment opportunities, harmed his psychological and physical wellbeing, and prevented him from obtaining an investigator as to prepare for trial and to gather exculpatory evidence "that may have existed." *Id.* It is evident that a forty-seven-month pretrial incarceration creates a presumption of prejudice. However, Rivera-Alejandro does not allege the conditions of his incarceration have been unduly oppressive. He also claims the government has prevented him from "liv[ing] free from anxiety and public obloquy." Docket No. 2318 at 11, ¶ 62. Yet he does not explain what undue pressures resulted from the pretrial incarceration. Furthermore, he does not provide evidence of impairment or cite to any particular missing evidence or witness that would impair his ability to mount a defense. *See id.*

Once again, the delay was not due to any government negligence; the government was reasonably diligent in addressing the pretrial motions associated with the multi-defendant suit. Against this showing by the government, the court would consider the presumptive harm to Rivera-Alejandro's defense since he did not outline specific

deficiencies. Taking the four *Barker* factors together, I find that on balance, the delay in trying Rivera-Alejandro has not violated his constitutional speedy trial right. Accordingly, I recommend that the court deny defendant's motion to dismiss on Sixth Amendment grounds.

CONCLUSION

For the foregoing reasons, Rivera-Alejandro's motion to dismiss for violation of his constitutional right to a speedy trial should be **DENIED**.

This report and recommendation is filed pursuant to 28 U.S.C. 636(b)(1)(B) and Rule 72(d) of the Local Rules of this Court. Any objections to the same must be specific and must be filed with the Clerk of Court **within fourteen days** of its receipt. Failure to file timely and specific objections to the report and recommendation is a waiver of the right to appellate review. *See Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Davet v. Maccorone*, 973 F.2d 22, 30-31 (1st Cir. 1992); *Paterson-Leitch Co. v. Mass. Mun. Wholesale Elec. Co.*, 840 F.2d 985 (1st Cir. 1988); *Borden v. Sec'y of Health & Human Servs.*, 836 F.2d 4, 6 (1st Cir. 1987).

IT IS SO RECOMMENDED.

In San Juan, Puerto Rico, this 19th day of July, 2013.

S/ Bruce J. McGiverin

BRUCE J. McGIVERIN
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA

Plaintiff

vs

CRIMINAL 09-0165CCC

1) JOEL RIVERA-ALEJANDRO
2) CARLOS RIVERA-ALEJANDRO
3) ALEXIS RIVERA-ALEJANDRO
4) ANGEL BETANCOURT-RIVERA
5) ROBERTO C. FONTANEZ-VEGA
6) ABIMAEL SERRANO-FIGUEROA
7) CARLOS E. RIVERA-RIVERA
8) ISMAEL RIVERA-SANTOS
9) JOSE GARCIA-RODRIGUEZ
10) CARLOS GONZALEZ-FRANCO
11) NATANAEL RUIZ-ORTEGA
12) ANGEL LOPEZ-MALDONADO
13) JOSE RIVERA-SERRANO
14) JUAN RIVERA-GEORGE
15) JULIO ALEXIS ORTIZ-BERRIOS
16) CARLOS A. RIVERA-RIVERA
17) MIGUEL ANGEL VEGA-DELGADO
18) VALERIE RIVERA-DEYA
19) SUANETTE RAMOS-GONZALEZ
20) JOSE L. FIGUEROA-CAMILO
21) ROSARIO RIVERA-GUZMAN
22) JAIME LOPEZ-CANALES
23) JUAN GONZALEZ-RAMOS
24) HECTOR RIVERA-BETANCOURT
25) ANGEL LUIS BETANCOURT-ORTIZ
26) RICARDO BETANCOURT-ORTIZ
27) JOSE LUIS DIAZ-FIGUEROA
28) JUAN GARCIA-RODRIGUEZ
29) LUIS X. RIVERA-RIVERA
30) JOSE TRINIDAD-PAGAN
31) EDGARDO RUIZ-TORRES
32) BIENVENIDO LOPEZ-CRUZ
33) JOSE E. PEÑA-MARTINEZ
34) RAUL TORRES-SANTANA
35) DAVID A. BULTRON-FLORES
36) KAREN LISBETH FIGUEROA-GALLARTUA
37) JORGE L. CRUZ-MALDONADO
38) JOSE L. TORRES-AGOSTO
39) VICTOR CASTRO-RODRIGUEZ
40) OSVALDO PEREZ
41) JUAN GABRIEL DE LA CRUZ-GUZMAN
42) ROBERTO BRUNO-DIAZ
43) LUIS E. SANCHEZ-ENCARNACION
44) JONATHAN CARRASQUILLO-COLON
45) NOEL RODRIGUEZ-ADORNO
46) ADDIER ENCARNACION-CRUZ
47) IDALIA MALDONADO-PEÑA

48) JAIME RIVERA-NIEVES
49) DOLORES ALEJANDRO
50) MANUEL ANTONIO FERRER-HADDOCK
51) RUBEN DELGADO-MALDONADO
52) MARLENIS CARRASQUILLO-QUIÑONES
53) ANGEL LUIS RIVERA-RIVERA
54) HECTOR ORTIZ-MARQUEZ
55) RAMON RODRIGUEZ-IDELFONSO

Defendants

ORDER

Having considered the Motion to Dismiss Indictment for Violation of Defendant's Right to a Speedy Trial (**docket entry 2318**) filed by [1] Joel Rivera-Alejandro, and joined by defendants [13] José Rivera-Serrano, [14] Juan Rivera-George, [7] Carlos E. Rivera-Rivera, [2] Carlos Rivera-Alejandro, [3] Alexis Rivera-Alejandro, and [19] Suanette Ramos-González at docket entries 2350, 2353, 2365, 2385 and 2410, which limited statements to pointing out that they are in similar or exact circumstances as movant, the Report and Recommendation filed by U.S. Magistrate Judge Bruce J. McGiverin (**docket entry 2416**) to which defendant [1] Joel Rivera-Alejandro raised objections at docket entry 2423, adopted by [2] Carlos Rivera-Alejandro docket entry 2425, the Court finds that the right to speedy trial has not been violated as to any of the defendants mentioned above. The Speedy Trial Act deadline as of this moment is December 24, 2013, given the various Motions to Suppress filed by [1] Joel Rivera-Alejandro at docket entries 2319, 2420 and 2421, and other excludable delays due to changes of plea.

SO ORDERED.

At San Juan, Puerto Rico, on October 15, 2013.

S/CARMEN CONSUELO CEREZO
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff	)	
	)	
v.	)	**Docket. NO. 3:09-CR-165-CCC**
	)	
[1] JOEL RIVERA-ALEJANDRO,	)	
	)	
Defendant	)	
	)	

TO THE HONORABLE
CARMEN C. CEREZO
UNITED STATES DISTRICT JUDGE
FOR THE DISTRICT OF PUERTO RICO

RESPONSE IN OPPOSITION TO MOTION TO CONTINUE DEFENDANT'S SENTENCING HEARING

COMES NOW the Defendant, [1] JOEL RIVERA-ALEJANDRO, by and through the undersigned counsel and hereby states, prays and requests as follows:

1. On May 10, 2016, the United States Probation Office requested a continuance of Defendant's Sentencing Hearing, scheduled for June 15, 2016, until August, 2016 or thereafter. (D.E. #4418)
2. As its primary reason for requesting the continuance, the U.S. Probation Office's Motion states that, "On May 5th, 2016, the undersigned Probation Officers met with Assistant U.S. Attorneys Dina Avila and Vanessa Bonhomme to discuss several important factors in this case including, but not limited to, the roles of each defendant, the computation of the individual drug amounts attributable to each defendant, and the possible application of other guideline enhancements. AUSA

Avila agreed to provide all the required information and documentation, but requires additional time to deliver the same to us."

3. Accordingly, the continuance is being requested because of the government's delay in providing "required information and documentation."
4. It is undisputed that the government has been on notice since January 5, 2016 (four (4) months prior to the May 5, 2016 meeting with U.S. Probation Officers) of Defendant's conviction by a unanimous jury verdict. (D.E. #4247)
5. It is undisputed that the government had 37 days (from March 29, 2016 to May 5, 2016) to prepare for its meeting with the U.S. Probation office and provide all necessary information and documentation related to the Defendant's PSR. (D.E. #
6. Pursuant to Rule 32 of the Federal Rules of Criminal Procedure, "the Court must impose sentence without unnecessary delay."
7. Moreover, Rule 50 of the Federal Rules of Criminal Procedure provides for the "prompt disposition" of criminal cases in that, "[s]cheduling preference must be given to criminal proceedings as far as practicable."
8. Defendant avers that the government's knowing and intentional delay cited in the U.S. Probation Office's motion is "purposeful or oppressive" and in violation of Defendant's Sixth Amendment Right to a Speedy Trial and his Fourteenth Amendment Right to Due Process.

I. Case Background – Pattern of delays prejudicing Defendant

9. On May 5, 2009, Defendant Rivera-Alejandro, along with fifty-four (54) other individuals, was charged pursuant to a seven (7) count Indictment charging him with conspiracy to possess with the intention to distribute, and substantive counts of

distributing, narcotic controlled substances in violation of Title 21 United States Code Sections 841(a)(1), 846 and 860. He was also charged with conspiracy to possess firearms in furtherance of an alleged drug conspiracy, in violation of Title 18 United States Code Section 924(o).

10. On June 8, 2009, Defendant Rivera-Alejandro was arrested and presented before a U.S. Magistrate, where he was given a copy of the Indictment against him. (D.E. #291)

11. Defendant, however, was not arraigned until July 1, 2009, when he was ordered detained without bail pending trial. (three weeks after his arrest) (D.E. #397).

12. On September 9, 2009, this Honorable Court set the first trial date for the case to start on February 23, 2010, approximately nine months after defendant's indictment. (D.E. #507)

13. On December 14, 2009, the Government filed a joint motion for extension of time as to the filing of Change of Plea motions; there was no request to continue the trial date. (D.E. #599)

14. On December 23, 2009, the Court granted the joint motion and decided, sua sponte, to vacate the trial date and reset the trial to March 30, 2010. (D.E. #623 and 628)

15. On March 24, 2010, the Court vacated the trial date based on pending Change of Plea Motions filed by co-defendants (no finding that the ends of justice were served by postponing the trial of remaining defendants). (D.E. #756)

16. On July 20, 2010, the Court reset the trial date for September 9, 2010. (D.E. #1132)

17. On September 7, 2010, (two days before the trial date) the Court vacated the trial date again, *sine die*. (D.E. #1316)

18. On November 17, 2011, the Court ordered a new trial date for December 7, 2011. (D.E. #1747) (14 months elapsed between the Court's Order vacating the trial and resetting a trial date).
19. On November 30, 2011, the Court resets the trial date for January 7, 2012. (D.E. #1763)
20. On December 15, 2011, approximately thirty-one (31) months after his arrest, Defendant Rivera-Alejandro filed letter with the Court stating that **"[t]he defendant wishes to prepare for trial..."** [emphasis added]. (D.E. #1778)
21. On January 30, 2012, the Court vacated the trial date due to pending Change of Plea motions filed by co-defendants 5 and 11. (D.E. #1833)
22. On March 9, 2012, this Honorable Court NOTED defendant's letter, GRANTED his Counsel's request to withdraw, and ordered the Clerk to appoint new counsel. (D.E. #1880)
23. On April 27, 2012, the Court set a Trial Date for June 14, 2012. (D.E. #1939)
24. On June 11, 2012, this Honorable Court vacated the trial date and reset it for August 14, 2012. (D.E. #2011 and 2012)
25. On August 6, 2012, this Honorable Court vacated the trial without setting a new trial date. (D.E. #2099)
26. On December 20, 2012, this Honorable Court set a new trial date for February 28, 2013. (D.E. #2230)
27. On February 15, 2013, the United States filed a Motion Requesting the Setting of a Status Conference in Lieu of Trial. (D.E. #2271)

28. On February 22, 2013, the Court vacated the trial and did not set a new trial date. (D.E. #2278)
29. On October 22, 2013, the Court reset the trial date for February 4, 2014 (D.E. #2463)
30. January 31, 2014, the Court vacated the trial and did not set a new trial date. (D.E. #2533)
31. On May 14, 2014, the Court reset the trial date for July 17, 2014 (D.E. #2712)
32. On July 14, 2014, the Court reset the trial for July 28, 2014, the first day of trial (D.E. #2762)
33. On January 5, 2016, the guilt/innocence phase of the trial of defendant Joel Rivera-Alejandro and his co-defendants concluded; resulting in his conviction by a Special Jury Verdict Form returned by the Jury on that same date. (D.E. #4247)
34. The Special Jury Verdict Form was utilized by the Court, among other things, to have the jury determine the applicable drug amount and other applicable sentencing factors related to Counts 1 through 5 of the Indictment.
35. On March 29, 2016, the Court denied Defendant's Rule 29 Motion, and set Defendant's Sentencing Date for June 15, 2016 (78 days allowed: 43 days to prepare the PSR, plus 35 days for the parties to review and file objections). (D.E. #4396 and 4399)
36. On April 27, 2016, and in compliance with the Court's Order, Defendant and his undersigned Counsel met with the assigned Probation Officer upon request at the cellblock of the Federal Office Building in Hato Rey, P.R. to participate in a PSR interview and to fully cooperate with the Officer's request for information and the execution of release forms.

37. Based on the above-referenced interview, Defendant understands that the Probation Officer has all the information necessary to produce Defendant's Pre-Sentence Investigation Report as required by Rule 32(d).

38. As of this date, Defendant and undersigned counsel are prepared to: 1) receive and review Defendant's Pre-Sentence Investigation Report (PSR) as soon as possible (but, not later than May 31, 2016; 2) proceed with Defendant's Sentencing Hearing on June 15, 2016; and 3) immediately file a Notice of Appeal of Defendant's conviction and sentence upon the Entry of Judgment in the court's docket.

39. Any delay in Defendant's Sentencing hearing prejudices Defendant's right to immediately file an appeal in the present case (which cannot be filed until the Court has filed its judgment on the case docket at the District Court level).

II. Legal Argument

a. Standard of Review – Abuse of Discretion

40. The decision to grant or deny a motion to continue Defendant's Sentencing Hearing is well within the Court's discretion and will only be overturned on an abuse of discretion standard. After the trial court has ruled, appellate review is deferential. Each case is *sui generis*, and the compendium of relevant factors varies from situation to situation. Hence, the court of appeals employs a case-specific approach. *See United States v. Torres*, 793 F.2d 436, 440 (1st Cir.), cert. denied, 479 U.S. 889, 107 S.Ct. 287, 93 L.Ed.2d 262 (1986).

41. The First Circuit Court of Appeals heard an appeal on this same issue in *U.S. v. Ottens*, where the Defendant had requested that his Sentencing be continued and the

District Court denied said continuance. The language used by the Court of Appeals in upholding the District Court's decision in *Ottens* is eerily familiar:

> Here, the balance tilts heavily against the movant. For one thing, sentencing hearings are ancillary to the main event--the determination of guilt or innocence--and they are characterized by a certain informality in the presentation of proof. *See, e.g., United States v. Tardiff*, 969 F.2d 1283, 1287 (1st Cir.1992). Thus, while such hearings are important, less preparation time is required, on average, for a disposition hearing than for a trial. For another thing, **once a defendant's guilt has been determined, the public has a heightened interest in the prompt dispensation of punishment. Accordingly, sentencing should occur with reasonable dispatch.** [emphasis added]
>
> *U.S. v. Ottens*, 74 F.3d 357 (1st Cir. 1996)

42. It can hardly be argued that the government's interest to delay the Defendant's Sentencing (by failing to produce information and documents to the Probation Office) can somehow outweigh the Defendant's own request in *Ottens* to continue his Sentencing in order to properly prepare for a sentence that he understood would affect the rest of his life. Thus, the appellate court's reasoning in *Ottens* serves as particularly relevant precedent in support of denying the Probation Offices' Motion.

b. Sixth Amendment - Defendant's Speedy Trial Right

43. The Speedy Trial Act ("STA") requires that a defendant who pleads not guilty to an offense be afforded a trial within 70-days of the date he/she is publicly charged by information or indictment or appears before a judicial officer to face said charges. *Title 18 U.S.C. §3161.* The 70-day Speedy Trial Act clock, however, can be tolled by virtually any occurrence on the case docket, as listed in 18 U.S.C. §3161 (h).

44. Delays excused under the Speedy Trial Act, however, cannot trump defendant's Constitutional guarantee to a "speedy trial" as set forth under the Sixth Amendment. *See United States v. Koller,* 956 F.2d 1408, 1413 (7th Cir.1992). Section 3173 of the STA states that "[n]o provision of this chapter shall be interpreted as a bar to any claim of denial of speedy trial as required by amendment VI of the Constitution." 18 U.S.C. § 3173 (1985); *See also United States v. Mitchell,* 723 F.2d 1040, 1049 (1st Cir.1983).

45. In *Pollard*, the Supreme Court established a firm foundation for interpreting that Defendant's Speedy Trial rights extend from trial through to Sentencing:

> ...The time for sentence is of course not at the will of the judge. Rule 32(a) of the Federal Rules of Criminal Procedure requires the imposition of sentence 'without unreasonable delay.'
>
> Whether delay in completing a prosecution such as here occurred amounts to an unconstitutional deprivation of rights depends upon the circumstances. See, e.g., Beavers v. Haubert, 198 U.S. 77, 87, 25 S.Ct. 573, 576, 49 L.Ed. 950; Frankel v. Woodrough, 8 Cir., 7 F.2d 796, 798. The delay must not be purposeful or oppressive. *Pollard v. United States*, 352 U.S. 354, 361 (1957).

46. The circuits that have addressed this issue have held that the right to a speedy trial extends to this phase. *See, e.g., United States v. Yelverton*, 339 U.S. App. D.C. 61, 197 F.3d 531, 535-39 (D.C. Cir. 1999); *Burkett v. Cunningham*, 826 F.2d 1208, 1220 (3rd Cir. 1987); *United States v. Reese,* 568 F.2d 1246, 1252-53 (6th Cir. 1977). Several other circuits, including the First Circuit, have assumed without deciding that the right extends to sentencing. See, e.g., *United States v. Carpenter*, 781 F.3d 599, 2015 U.S. App. LEXIS 5109 (1st Cir. 2015)(Thus, we see no reason to depart from

the majority view that assumes that the Sixth Amendment also protects against post-trial delay).

47. In *U.S. v. Dowdell*, 595 F.3d 50 (1st Cir. 2010), the First Circuit Court of Appeals succinctly described the applicable remedy and four factors enumerated by the U.S. Supreme Court in *Barker v. Wingo*, when considering Speedy Trial violations:

> The Sixth Amendment of the United States Constitution, however, provides that, "every defendant shall enjoy the right to speedy and public trial." U.S. Const. amend. VI. **If the government violates this constitutional right, the criminal charges must be dismissed**. *Strunk v. United States,* 412 U.S. 434, 439-40, 93 S.Ct. 2260, 37 L.Ed.2d 56 (1973). To determine whether a violation has occurred, we use the four-part balancing test established in *Barker v. Wingo,* 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972), which requires a weighing of: (1) the length of the delay, (2) the reasons for the delay, (3) the defendant's assertion of his right, and (4) prejudice to the defendant resulting from the delay. *Id.* at 530, 92 S.Ct. 2182. [emphasis added]
> *Dowdell*, 595 F.3d at 60.

48. In analyzing the case at bar under the magnifying glass of the Sixth Amendment and *Barker,* Defendant notes that all four *Barker* factors weigh in Defendant's favor and that the government's instant delay is purposeful and/or oppressive.

i. Length of Delay

49. The Supreme Court has said that "the lower courts have generally found post-accusation delay `presumptively prejudicial' at least as it approaches one year." *Doggett v. United States,* 505 U.S. 647, 652 n. 1, 112 S.Ct. 2686, 2691 n. 1, 120 L.Ed.2d 520 (1992) (citations omitted); *see also United States v. King,* 909 F.Supp. 369, 372 (E.D.Va.1995). *See, e.g., Santiago-Beceril,* 130 F.3d at 21-22 (holding that fifteen month delay in case was presumptively prejudicial); *Koller,* 956 F.2d at 1414 (holding that an eight and one-half month delay was enough to warrant further inquiry); *Colombo,* 852 F.2d at 24 (holding that a twenty-four month period was long

enough to be presumptively prejudicial); *King,* 909 F.Supp. at 372 (holding that a thirty-one month delay was sufficient to trigger the *Barker* test).

50. The post-accusation "length of delay" in this case exceeded five (5) years at the time the Defendant's trial commenced on July 28, 2014. If the Court denies the U.S. Probation Office's motion for continuance and sentences Defendant on June 15, 2016, the Defendant will have resided at the Metropolitan Detention Center for over seven (7) years pending his trial, conviction and sentencing.

51. If the Court grants the pending motion to continue Defendant's Sentencing to August, 2016 or beyond, Defendant's length of delay will have exceeded 87 months before obtaining the right to move this case beyond the District Court level.

ii. Reasons for the Delay

52. The second factor, the reason(s) for the delay, has been called, "the focal inquiry." *United States v. Sears, Roebuck & Co.,* 877 F.2d 734, 739 (9th Cir.1989) (citation omitted). The inquiry into causation involves a sliding scale: deliberately dilatory tactics must be weighed more heavily against the state than periods of delay resulting from negligence. *Rashad v. Walsh,* 300 F. 3d 27, 34 (1st Cir. 2002). To the extent that valid reasons cause delay, the delay does not count against the state. So too delay that is caused by the defendant. *See Davis v. Puckett,* 857 F.2d 1035, 1040-41 (5th Cir.1988).

53. During the 84 months since defendant's indictment, there are some periods of delay that are attributable to the defendant and other periods that are attributable to the government, however, the current motion to continue is attributable entirely to the

government's failure to provide requested information and documents to the U.S. Probation office on May 5, 2016. (See., U.S. Probation Motion at D.E. #4418)

54. It is undisputed that the government had four (4) months (from the date of conviction on January 5, 2016 to May 5, 2016), and at least one (1) month (from date the Court set Defendant's Sentencing Hearing on March 29, 2016 to May 5, 2016) to prepare, and gather documentation for their impending PSR meeting with the assigned U.S. Probation Officers.

55. Accordingly, the reason for the government's delay at this time is wholly inexcusable. The "purposeful or oppressive delay" imposed on the Defendant by the government is aimed to continue to punish Defendant for his refusal to plead guilty, by keeping him locked away in a detention facility that is not designed for prolonged custodial incarceration and by preventing Defendant from exercising his right to file an appeal.

iii. Defendant's Assertion of his rights

56. Defendant has failed to prosecute rights, or otherwise waived his rights, in this case and has been diligent in pursuing a trial and acquittal.

57. On or about December 10, 2011 (date-stamped received by the Court on 12/13/2011) Defendant wrote to this Honorable Court to request an Investigator and to express his desire to prepare for trial. (D.E. #1778)

58. On April 17, 2013, Defendant filed a Motion to Dismiss the case for violation of his Speedy Trial Rights. (D.E. #2318)

59. On December 31, 2013, Defendant filed a Second Notice of Assertion of Speedy Trial Right. (D.E. #2499)

60. On May 28, 2014, Defendant file a Third Notice of Assertion of Speedy Trial Right. (D.E. #2727)

61. Finally, on April 27, 2016, Defendant met with the U.S. Probation Officer in compliance with her request to answer questions and sign release forms so that a timely Pre-Sentence Investigation Report could be prepared and filed with the Court in time to allow the June 15, 2015 Sentencing Hearing to proceed.

iv. Prejudice Resulting from Delay

62. The fourth, and final, factor "should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. Th[e] Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired." *Barker,* 407 U.S. at 532, 92 S.Ct. at 2193 (footnote omitted); *see also Koller,* 956 F.2d at 1414.

63. The primary prejudice suffered by Defendant in continuing to have his sentencing delayed is the infringement said delays impose upon his appeal rights.

64. By continuing to engage in dilatory tactics and purposeful or oppressive delays, the government imposes a punitive administrative detention that Defendant is unable to escape and that takes away his right to even file his appeal (not to mention impairing his ability to properly prepare said appeal).

65. The Court's duty to protect the Defendant from suffering this prejudice to his ability to pursue his appeal rights was analyzed in some detail by the D.C. Court of Appeals in *U.S. v. Yelverton*:

> Consequently, as the district court recognized, the key factor in evaluating his Sixth Amendment claim is prejudice, and here the delay of Yelverton's right of appeal is the most problematic.[9] The government ignores this claim of prejudice in its brief on appeal. Obviously, where a defendant proves to have a meritorious claim on appeal, the prejudice from a delayed appeal is clear. But a showing of prejudice cannot be entirely contingent upon success on appeal, for that would seriously undermine the right to a speedy sentencing, if such a right exists. Consequently, it is precisely because it will be difficult to determine at the time of sentencing whether an appeal will result in a reversal of the conviction or other relief for a defendant that the requirement of Rule 32(a) that sentence be imposed "without unnecessary delay" assumes added significance. Put otherwise, prejudice caused by a delayed "right of appeal" does not fit easily within the pretrial jurisprudence on the prejudice factor of the *Barker v. Wingo* test. **Protection of the right of appeal, insofar as it is implicated by the right to speedy sentencing, rests heavily on the government and the district court.** This we view to be implicit in the mandate of the federal rule. When these protections fail, the question of appropriate remedy, if any, remains. [emphasis added]. *Id.* at 538.

66. Additionally, the extended, 7-year, incarceration suffered by Defendant in a facility that was designed for temporary pretrial detention of defendants awaiting trial and that has been acknowledged by the BOP as over-crowded[1] has prejudiced the defendant's ability work and provide financial assistance to his family, to spend time with his minor son and other family members on a daily basis, to attend educational, vocational and treatment programs offered at BOP prison institutions that offer the defendant rehabilitation, and a multitude of other negative mental health and physical health consequences that could have been avoided if the case had not been delayed.

67. The undue prejudice resulting from the delays in Defendant's case are patent and obvious. Extended administrative detentions such as the one in this case were clearly

[1] Due to overcrowded conditions at the Metropolitan Detention Center in Guaynabo, PR, the Bureau of Prisons has engaged in a program of transferring/shuffling pretrial detainees to and from the continental United States as space allows since approximately 2012.

abhorred by the Founding Fathers when they incorporated the Sixth Amendment into the Bill of Rights. Simply put, "Justice delayed is justice denied."

c. Fourteenth Amendment – Due Process Right

68. Due process of law requires that "[n]o person shall be deprived of life, liberty, or property without due process of law." *U.S. Const. amend. XIV.*

69. The Due Process Clause protects defendants against fundamentally unfair treatment by the government in criminal proceedings. The Supreme Court, moreover, has recognized that the Due Process Clause has "a limited role to play in protecting against oppressive delay." *Lovasco,* 431 U.S. at 789, 97 S.Ct. at 2048. A delay in sentencing that violates these fundamental guarantees can, depending on the circumstances, constitute a violation of the Due Process Clause. *See State v. Betterman*, 342 P.3d 971, 978 (Mont. 2015) (Due Process Clause protects defendants from unreasonable delays in sentencing)[2]

70. In order to determine whether a defendant has been deprived of his constitutional right of due process through a delayed sentencing, courts generally consider (1) the reasons for the delay and (2) the prejudice to the defendant. *Lovasco,* 431 U.S. at 790, 97 S.Ct. at 2049; *see also Sanders,* 452 F.3d at 580 ("Though the *Lovasco* line of cases addresses pretrial delays, we find it equally applicable to [delays in resentencing]. As in the time period before the *Sixth Amendment* right to a speedy

[2] Reasonable timeliness of sentencing is a due process guarantee expressed by the Montana Legislature in several statutory provisions. Section 46–18–101(3)(a), MCA, provides: "Sentencing and punishment *must* be certain, *timely,* consistent, and understandable." (Emphasis added.) Section 46–18–102(3)(a), MCA, provides: "if the verdict or finding is guilty, sentence must be pronounced and judgment rendered within a *reasonable* time." (Emphasis added.) Section 46–18–115, MCA, provides: "the court shall conduct a sentencing hearing *without unreasonable delay*...." The 1991 Commission Comments clarify that this statute "mainly embodies due process constitutional law that has been developed in federal courts and the Montana Supreme Court." 2014 Annotations to the MCA, vol. 10 at 842. We find that these prohibitions, taken together with the protection against unfair treatment in criminal proceedings guaranteed by the Due Process Clause, protects a criminal defendant from unreasonable delay between conviction and sentencing. *State v. Betterman*, 342 P.3d 971, 978 (Mont. 2015).

trial attaches, the primary concern after the right ceases to apply is 'oppressive delay.'").

71. By applying the same factors as discussed in the Speedy Trial section above, the Court must step in to ensure a prompt disposition of this case as set forth under the Federal Rules of Criminal Procedure, which prioritize criminal cases to conform with the principles established under the Speedy Trial Act.

72. To allow another delay of Defendant's case at this juncture without reasonable cause (government failed to provide information after having 4 months notice) and prejudicing Defendant's right to file an appeal requires this Honorable Court to protect Defendant's Due Process right to a prompt disposition of his case.

CONCLUSION

WHEREFORE, the Defendant respectfully requests that this Honorable Court DENY the Motion to Continue and Order the immediate release of the Defendant's Pre-Sentence Investigation Report to the parties.

RESPECTFULY SUBMITTED,

JOEL RIVERA-ALEJANDRO
By Counsel

By: **/s/Juan E. Milanés**
Juan E. Milanés, Esq.
Counsel for Defendant Joel Rivera-Alejandro
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the counsel(s) of record.

At Reston, Virginia, this 12th day of May, 2016

By: **/s/Juan E. Milanés**
Juan E. Milanés, Esq.
Counsel for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff	)	
	)	
v.	)	**Docket. NO. 09-CR-165-CCC**
	)	
[1] JOEL RIVERA-ALEJANDRO,	)	
	)	
Defendant	)	
	)	

MOTION TO SET SENTENCING HEARING (9/5/17 – 9/12/17)

TO THIS HONORABLE COURT:

COMES NOW, Defendant [1] JOEL RIVERA-ALEJANDRO, by and through his undersigned counsel and respectfully informs the Court as follows:

1. On January 5, 2016, Defendant was convicted by a jury verdict on Counts 1-6 of the Indictment in this case. (D.E. #4247)
2. On March 29, 2016, this Honorable Court set a Sentencing Hearing for Defendant to be held on June 15, 2016. (D.E. #4399)
3. On May 10, 2016, the U.S. Probation Office filed a Motion to Continue Defendant's Sentencing at D.E. #4418 and on May 12, 2016, Defendant Objected to said Continuance at D.E. #4423.
4. On May 23, 2016, this Honorable Court Continued Defendant's Sentencing Hearing to August 10, 2016. (D.E. #4435)
5. On July 7, 2016, the U.S. Probation Office again requested a second Continuance of Defendant's Sentencing Hearing due to the government's

failure to produce information necessary for the production of Defendant's Pre-Sentence Investigation Report. (D.E. #4474)

6. On August 15, 2016, this Honorable Court again granted the U.S. Probation Officer's Motion to Continue Defendant's Sentencing at D.E. #4500 and on August 22, 2016, reset Defendant's Sentencing Hearing for October 12, 2016 at D.E. #4510.

7. On August 31, 2016, the U.S. Probation Officer issue Defendant's PSR (D.E. #4512)

8. On September 28, 2016, this Honorable Court reset Defendant's Sentencing Hearing to October 28, 2016. (D.E. #4539)

9. On October 14, 2016, Defendant provided supplemental objections to the PSR to the U.S. Probation Officer via email.

10. On October 17, 2016, this Honorable Court issued an Order resetting Defendant's Sentencing Hearing to May 3, 2017. (D.E. #4558)

11. On March 8, 2017, this Honorable Court reset Defendant's Sentencing hearing to June 14, 2017. (D.E. #4633)

12. On June 13, 2017, upon the United States' Motion to Continue, this Honorable Court reset Defendant's Sentencing hearing to July 17, 2017. (D.E. #4746)

13. On June 26, 2017, this Honorable Court issued an Order to Defendant to respond as to whether he joined co-defendant Carlos Rivera-Alejandro's Motion on the issue of Crack to Powder Cocaine Ratio (D.E. #4755)

14. On the following day, June 27, 2017, Defendant complied with the Court's request. (D.E.#4757)

15. On July 21, 2017, this Honorable Court vacated Defendant Joel Rivera-Alejandro's Sentencing hearing, to be reset by separate Order. (D.E. #4792)

16. Immediately thereafter, also on July 21, 2017, Defendant moved this Honorable Court for an Order to the U.S. Marshals Service to keep him in the jurisdiction pending his Sentencing and requesting a Sentencing Hearing during the month of August, 2017. (D.E.#4793)

17. Within a short time thereafter, again on July 21, 2017, this Honorable Court granted Defendant's Motion in part (to keep defendant in the jurisdiction) and Denied it in part (rejecting Defendant's proposed August Sentencing dates). (D.E. #4794)

18. In the Court's Order at D.E. #4794, the Court stated, "...the United States just filed its Response in Opposition to said Motion on July 14, 2017 (d.e. 4787), which is when the matter was placed under advisement by the Court" as part of its reasoning for not setting a hearing date in August, 2017.

19. Defendant Joel Rivera-Alejandro avers that over 30 days have passed since the United States filed its Response in Opposition on July 14, 2017 to the pending Motion and the Court has had sufficient time to take the matter under advisement.

20. Defendant reminds the Court that he has been held captive for over eight (8) years by federal authorities in a temporary detention center, which is not suitable for long-term imprisonment. Moreover, he has now been waiting over 19 months, since his January, 2016 conviction, to be sentenced by the Court with no ability to file an appeal.

21. The undersigned Counsel respectfully informs this Honorable Court that he will travel to the District of Puerto Rico from September 5 to 12, 2017 and is available during said week to attend to Defendant's overdue Sentencing.

WHEREFORE, Defendant Joel Rivera-Alejandro respectfully requests that this Honorable Court SET Defendant's Sentencing Hearing for a date and time convenient for this Honorable Court on, or between the dates of, September 5 to 12, 2017.

RESPECTFULY SUBMITTED,

JOEL RIVERA-ALEJANDRO,
By Counsel

By: **/s/Juan E. Milanés**
Juan E. Milanés, Esq.
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Email: Ecf.MilanesLaw@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the counsel(s) of record.

At Herndon, Virginia, this 23rd day of August, 2017.

By: **/s/Juan E. Milanés**
Juan E. Milanés, Esq.
Counsel for Defendant Joel Rivera-Alejandro

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOEL RIVERA-ALEJANDRO,
CARLOS RIVERA-ALEJANDRO,
ALEXIS RIVERA-ALEJANDRO,
CARLOS E. RIVERA-RIVERA,
JUAN RIVERA-GEORGE,
SUANETTE RAMOS-GONZALEZ,
IDALIA MALDONADO-PEÑA,

Defendants.

Case No. 09-00165

JURY VERDICTS

BEFORE THE HONORABLE CARMEN CONSUELO CEREZO

TUESDAY, JANUARY 5, 2016, 10:22 A.M.

HATO REY, PUERTO RICO

APPEARANCES:

FOR THE PLAINTIFF: DINA AVILA-JIMENEZ
VANESSA ELSIE BONHOMME
ASSISTANT U.S. ATTORNEYS

FOR DEFENDANTS: JUAN EVER MILANES-SANCHEZ, ESQ.
JEDRICK BURGOS-AMADOR, ESQ.
MARIELA MAESTRE-CORDERO, ESQ.
JAVIER CUYAR-OLIVO, ESQ.
JOSE OLMO-RODRIGUEZ, ESQ.
RAYMOND SANCHEZ-MACEIRA, ESQ.
MARIANGELA TIRADO-VALES, ESQ.

received it, Mr. Cuyar said he needed ten minutes to get here. By the time we had all the attorneys, it was time for the jury to retire because there's one juror, that, as you know, has to leave at 4:45.

I will start with the last note. That note is jury note number 3. It says, "Honorable Judge Cerezo, we request the transcripts of the following witnesses, Jaime Rivera Nieves, Miguel Vega Delgado and Jaime Lopez Canales."

Signed by the foreman.

Now, I'm going to ask the jurors if they want the entire transcripts read, just to know, because these are very lengthy transcripts. Do we have the transcripts in court?

THE CLERK: We have some of them, Your Honor, but we have identified --

THE COURT: What do you have in court, because we have to have them complete.

THE CLERK: I have here five of them.

THE COURT: How many transcripts are the total?

THE CLERK: We're talking more than 15.

MR. MILANES: There are several days, Your Honor.

MS. AVILA: I understand there are 27.

THE COURT: Wait, one at a time. We have five here, and just from the volume, you can tell that it will take some time. Please be seated.

Now, I had asked the reporter if she has the other

appellate division because I cannot recall, I'm the prosecuting attorney in the Flores Rivera case, and in the readback situation, I know the big issue there was the procedural, but I don't remember if there was also an issue as to when Judge Perez Gimenez I think asked the jury in a note what did they want read back to them or was it a specific portion or not, I can't remember.

THE COURT: I don't think they reached any such issue, but I'll check.

MS. AVILA: I was thinking that maybe if Your Honor can take a look at that portion because I don't know if the First Circuit addressed that part.

THE COURT: I'll take another look at that.

The answer to the note as sent yesterday late afternoon -- this was received approximately 15 minutes before the close of deliberations at 4:45, and by the time, as I said, that all defendants and their attorneys were in court -- I'm sorry, all the attorneys were in court, it was already time for the jury to leave because of the commitment of that one juror.

So the first answer is: Transcripts cannot be sent to the jury room. Please clarify if what you request is that the transcripts of the trial testimonies of these three witnesses be read back in court, in open court.

MR. MILANES: Which constitutes 21 days, Your Honor. So that they're aware what it is that they're asking for.

juror [Redacted]] has to leave every day at 4:45 p.m. a follow-up note to the earlier note sent yesterday, January 4, 2016, by the foreman.

All right. The note from juror 8, [Name Redacted], will be brought to my attention again on January 8, 2016. All right? Taco, keep this separate, that is pending response.

(Pause.)

THE COURT: All right. Juror number 5 answered, "Will try to reschedule for another date."

I'm responding, "Thank you."

So we'll wait for his final answer on that.

We have not received any response on the matter of the transcripts. I asked them to clarify, stating first that the transcripts would not be sent to the jury room for readback and to clarify if they wish to have readbacks of the transcripts in the courtroom, and that it's 26 days of transcripts.

I was looking at one transcript there. I would have to take a closer look at what time that takes, how long it would take to read those, because objections would not be read, sidebars, of course, don't go to the jury at all. So some of those transcripts have a lot of evidentiary issues that don't go to the jury at all.

Let's wait another five minutes to see if they answer.

(Pause.)

THE COURT: The juror has answered the note on

transcripts, "Honorable Carmen C. Cerezo: We, the jury, will continue to deliberate. We will not be going back into open court to hear the transcripts." And it's signed by the foreman. It was received at 11:15 a.m. This note will be filed and made a part of the record with the other juror notes.

We will recess while the jury deliberates. The same instruction, you have to be back within ten minutes if there's a need to return to court.

(Whereupon at 11:36 a.m. the Court took a recess.)

AFTERNOON SESSION

3:21 P.M.

THE CLERK: Criminal case 2009-165, U.S.A. versus Joel Rivera Alejandro, Carlos Rivera Alejandro, Alexis Rivera Alejandro, Carlos E. Rivera Rivera, Juan Rivera George, Suanette Ramos Gonzalez and Idalia Maldonado Peña for further jury trial.

On behalf of the Government, Dina Avila and Vanessa Bonhomme which are not present in court.

Attorneys Juan Milanes Sanchez, Jedrick Burgos, Mariela Maestre, Javier Cuyar, Jose Olmo, Raymond Sanchez and Mariangela Tirado on behalf of the defendants.

Defendants are present in court and they are being provided with the assistance of the court interpreter.

THE COURT: Could I have the first note?

We are waiting for the two Assistant United states Attorneys to arrive after receiving the jury note. The jurors have informed that they have reached a verdict.

(Pause.)

THE COURT: The prosecutors were called and they informed they were on their way.

All right, Ms. Bonhomme and Ms. Avila have arrived.

MS. AVILA: My apologies, Your Honor.

THE COURT: There are two juror notes, one following the other. The first one reads: "We, the jury, have reached

a verdict and are in the process of filling the verdict forms."

The second one reads, "We, the jury, have reached a verdict."

These two notes will be made a part of the record. They are signed by the foreperson, Albert Pagan.

I will briefly address the persons who are in the courtroom in English and Spanish. The jury has announced that it has reached a verdict. This is a moment of a lot of expectations, especially for the defendants and the families, as well as for the United States.

There has been complete order in this courtroom as far as the spectators, and I have always singled out the defendants as having had exemplary conduct during this proceeding. That has to remain the same whatever the verdict is.

Now, I will speak to the spectators in Spanish.

(Speaking in Spanish.)

The jury will be brought in.

The conversations will stop as of now at counsel table.

(Jury present at 3:28 p.m.)

THE COURT: Good afternoon, members of the jury.

Please be seated, members of the jury.

Mr. Foreman, I understand that the jury has reached a verdict in this case?

JURY FOREMAN: Yes, Your Honor.

THE COURT: Is your announcement as to having r
a verdict as to each of the defendants on trial?

JURY FOREMAN: Yes, Your Honor.

THE COURT: Let the record show that the jury is complete. The foreman shall hand the verdict to the deputy marshal, or the CSO is receiving it.

The verdicts will be read by the courtroom deputy.

You will read each one as I hand it to you, first the verdict form for defendant Joel Rivera Alejandro.

Mr. Rivera Alejandro, please stand.

THE CLERK: In the United States District Court for the District of Puerto Rico.

United States of America vs. Joel Rivera Alejandro. Criminal 09-165 CCC, defendant number 1.

Special Verdict Form for Defendant [1], Joel Rivera Alejandro.

Count 1 charges a conspiracy to possess with the intent to distribute controlled substances within one thousa feet of a protected location pursuant to 21 U.S.C. 860(a).

We, the jury, find that defendant Joel Rivera Alejandro is guilty beyond reasonable doubt of conspiring t possess with intent to distribute controlled substances wi one thousand feet of a real property, which between 2006 t 2009 consisted of a playground located at either Villa

05/07/2009	10	ORDER granting 8 Motion to detain without bail as to all defendants.Signed by US Magistrate Judge Camille L. Velez-Rive on 5/7/09. (ni) (Entered: 05/08/2009)
05/12/2009	114	CD/TAPE REQUEST by USA as to all defendants for proceedings held on May 11, 2009 before Judge Magistrate Velez Rive. (Avila-Jimenez, Dina) Modified on 5/13/2009 as to docket text (mim). (Entered: 05/12/2009)
05/13/2009	119	CD/TAPE REQUEST by USA as to all defendants for proceedings held on May 12, 2009 before Judge Mag. Velez Rive. (Avila-Jimenez, Dina) Modified on 5/13/2009 as to docket text (mim). (Entered: 05/13/2009)
05/13/2009	122	***SELECTED PARTIES***ORDER granting 6 Motion Requesting Order as to Joel Rivera-Alejandro (1), Carlos Rivera-Alejandro (2), Idalia Maldonado-Pena (47), Dolores Alejandro-Rodriguez (49). Signed by Judge Carmen C. Cerezo on 5/12/09. (mim) (Entered: 05/13/2009)
05/13/2009	124	***SELECTED PARTIES***Writ Issued in case as to Joel Rivera-Alejandro, Carlos Rivera-Alejandro, Idalia Maldonado-Pena, Dolores Alejandro-Rodriguez. (mim) (Entered: 05/13/2009)
05/21/2009	211	First INFORMATIVE motion *First Discovery Package* by USA as to Joel Rivera-Alejandro, Carlos Rivera-Alejandro, Alexis Rivera-Alejandro, Angel Betancourt-Rivera, Roberto C. Fontanez-Vega, Abimael Serrano-Figueroa, Carlos E. Rivera-Rivera, Ismael Rivera-Maldonado, Jose Garcia-Rodriguez, Carlos Gonzalez-Franco, Natanael Ruiz-Ortega, Angel Lopez-Maldonado, Jose Rivera-Sierra, Juan Rivera-George, Julio Alexis Ortiz-Berrios, Carlos A. Rivera-Rivera, Miguel Angel Vega-Delgado, Valerie Rivera-Deya, Suanette Ramos-Gonzalez, Jose L. Figueroa-Camilo, Rosario Rivera-Guzman, Jaime Lopez-Canales, Juan Gonzalez-Ramos, Hector Rivera-Betancourt, Angel Luis Betancourt-Ortiz, Ricardo Betancourt-Ortiz, Jose Luis Diaz-Figueroa, Juan Garcia-Rodriguez, Luis X. Rivera-Rivera, Jose Trinidad-Pagan, Edgardo Ruiz-Torres, Bienvenido Lopez-Cruz, Jose E. Pena-Martinez, Raul Torres-Santana, David A. Bultron-Flores, Karen Lisbeth Figueroa-Gallartua, Jorge L. Cruz-Maldonado, Jose L. Torres-Agosto, Victor Castro-Rodriguez, Osvaldo Perez, Juan Gabriel De-La-Cruz-Guzman, Roberto Bruno-Diaz, Luis E. Sanchez-Encarnacion, Jonathan Carrasquillo-Colon, Noel Rodriguez-Adorno, Addier Encarnacion-Cruz, Idalia Maldonado-Pena, Jaime Rivera-Nieves, Dolores Alejandro-Rodriguez, Manuel Antonio Ferrer-Haddock, Ruben Delgado-Maldonado, Marlenis Carrasquillo-Quinones, Angel Luis Rivera-Rivera, Hector Ortiz-Marquez, Ramon Rodriguez-Idelfonso. (Bauza, Mariana) (Entered: 05/21/2009)
06/08/2009		Arrest of (1) Joel Rivera-Alejandro, (3) Alexis Rivera-Alejandro, (5) Roberto C. Fontanez-Vega, (11) Natanael Ruiz-Ortega, and (27) Jose Luis Diaz-Figueroa. (mcv) (Entered: 06/08/2009)
06/08/2009	281	*RESTRICTED* CJA 23 Financial Affidavit by Joel Rivera-Alejandro (mcv) (Entered: 06/08/2009)
06/08/2009	291	Minute Entry for proceedings held before US Magistrate Judge Bruce J. McGiverin: Initial Appearance as to (1) Joel Rivera-Alejandro was held on

		Perez, Juan Doe #1, Roberto Bruno-Diaz, Luis E. Sanchez-Encarnacion, Jonathan Carrasquillo-Colon, Noel Rodriguez-Adorno, Addier Encarnacion-Cruz, Idalia Maldonado-Pena, Jaime Rivera-Nieves, Dolores Alejandro-Rodriguez, Manuel Antonio Ferrer-Haddock, Ruben Delgado-Maldonado, Marlenis Carrasquillo-Quinones, Angel Luis Rivera-Rivera, Hector Ortiz-Marquez, Ramon Rodriguez-Idelfonso held on 5/5/2009. W/A to be issued. Arraignment to be set upon arrest. (mim) Modified on 5/7/2009 to correct docket number (mim). (Entered: 05/07/2009)
05/05/2009	5	*RESTRICTED* Arrest Warrant Issued by US Magistrate Judge Camille L. Velez-Rive in case as to Joel Rivera-Alejandro, Carlos Rivera-Alejandro, Alexis Rivera-Alejandro, Angel Betancourt-Rivera, Roberto C. Fontanez-Vega, Abimael Serrano-Figueroa, Carlos E. Rivera-Rivera, Ismael Rivera-Maldonado, Jose Garcia-Rodriguez, Carlos Gonzalez-Franco, Natanael Ruiz-Ortega, Angel Lopez-Maldonado, Jose Rivera-Sierra, Juan Rivera-George, Julio Alexis Ortiz-Berrios, Carlos A. Rivera-Rivera, Miguel Angel Vega-Delgado, Valerie Rivera-Deya, Suanette Gonzalez-Ramos, Jose L. Figueroa-Camilo, Rosario Rivera-Guzman, Jaime Lopez-Canales, Juan Gonzalez-Ramos, Hector Rivera-Betancourt, Angel Luis Betancourt-Ortiz, Ricardo Betancourt-Ortiz, Jose Luis Diaz-Figueroa, Juan Garcia-Rodriguez, Luis X. Rivera-Rivera, Jose Trinidad-Pagan, Edgardo Ruiz-Torres, Bienvenido Lopez-Cruz, Jose E. Pena-Martinez, Raul Torres-Santana, David A. Bultron-Flores, Lisbeth Rodriguez-Echevarria, Jorge L. Cruz-Maldonado, Jose L. Torres-Agosto, Victor Castro-Rodriguez, Osvaldo Perez, Juan Doe #1, Roberto Bruno-Diaz, Luis E. Sanchez-Encarnacion, Jonathan Carrasquillo-Colon, Noel Rodriguez-Adorno, Addier Encarnacion-Cruz, Idalia Maldonado-Pena, Jaime Rivera-Nieves, Dolores Alejandro-Rodriguez, Manuel Antonio Ferrer-Haddock, Ruben Delgado-Maldonado, Marlenis Carrasquillo-Quinones, Angel Luis Rivera-Rivera, Hector Ortiz-Marquez, Ramon Rodriguez-Idelfonso. (mim) Modified on 5/7/2009 to correct docket number (mim). (Entered: 05/07/2009)
05/05/2009	1	MOTION to Seal Case by USA as to all defendants.(mim) (Entered: 05/07/2009)
05/05/2009	2	ORDER granting 1 Motion to Seal Case as to all defendants. Signed by US Magistrate Judge Camille L. Velez-Rive on 5/5/09. (mim) Modified on 5/7/2009 to correct docket number (mim). (Entered: 05/07/2009)
05/06/2009	6	***EX-PARTE*** MOTION Requesting Order by USA as to Joel Rivera-Alejandro, Carlos Rivera-Alejandro, Idalia Maldonado-Pena, Dolores Alejandro-Rodriguez. (Attachments: # 1 Proposed Order)(mim) (Entered: 05/07/2009)
05/06/2009	7	***EX-PARTE*** MOTION Requesting Order by USA as to Joel Rivera-Alejandro, Carlos Rivera-Alejandro, Idalia Maldonado-Pena, Dolores Alejandro-Rodriguez. (Attachments: # 1 Proposed Order)(mim) (Entered: 05/07/2009)
05/06/2009	8	MOTION to detain without bail by USA as to all defendants. (ni) (Entered: 05/08/2009)

		vacated. Arraignment and Bail Hearings are reset for 7/1/2009 at 09:00 AM in Courtroom 9 before US Magistrate Judge Bruce J. McGiverin. Signed by US Magistrate Judge Bruce J. McGiverin on 06/23/09.(mcv) Modified on 6/23/2009 to edit (er). (Entered: 06/23/2009)
07/01/2009	393	ORDER OF DETENTION PENDING TRIAL as to Joel Rivera-Alejandro. Signed by US Magistrate Judge Bruce J. McGiverin on 7/1/09.(yo) (Entered: 07/01/2009)
07/01/2009	397	Minute Entry for proceedings held before US Magistrate Judge Bruce J. McGiverin: Arraignment as to Joel Rivera-Alejandro (1) Count 1,2-4,5,6,7 held on 7/1/2009. Present AUSA Mariana Bauza, Atty. Miriam Ramos in substitution of Atty. Luz Rios, and USPO Evelyn Jimenez. Defendant was found competent to understand the proceedings and waived the reading of the indictment. PONG entered as to all counts. Government has five (5) days to produce discovery. Case is referred to Judge Cerezo for trial schedule. As to bail, after hearing the parties, the Court granted the government's motion for detention and ordered defendant detained without bail. Order to be issued. (Court Reporter FTR.)(Court Interpreter Hilda Gutierrez.)Hearing held at 09:16 and ended at 09:19. (mcv) (Entered: 07/02/2009)
07/16/2009	436	Minute as to ALL DEFENDANTS: **Status Conference set for 8/20/2009 04:30 PM before Judge Carmen C. Cerezo.** (gsr) (Entered: 07/16/2009)
07/31/2009	453	ORDER holding in abeyance 452 Motion re-opening detention hearing as to Carlos E. Rivera-Rivera (7).**The government is to file a reply to above defendant's motion regarding re-opening of detention hearing and potential release conditions.**Signed by US Magistrate Judge Camille L. Velez-Rive on 7/31/2009. (IM) (Entered: 07/31/2009)
08/18/2009	470	***EX-PARTE***First MOTION in Compliance by USA as to Joel Rivera-Alejandro, Carlos Rivera-Alejandro, Alexis Rivera-Alejandro, Angel Betancourt-Rivera, Roberto C. Fontanez-Vega, Abimael Serrano-Figueroa, Carlos E. Rivera-Rivera, Ismael Rivera-Maldonado, Jose Garcia-Rodriguez, Carlos Gonzalez-Franco, Natanael Ruiz-Ortega, Angel Lopez-Maldonado, Jose Rivera-Sierra, Juan Rivera-George, Julio Alexis Ortiz-Berrios, Carlos A. Rivera-Rivera, Miguel Angel Vega-Delgado, Valerie Rivera-Deya, Suanette Ramos-Gonzalez, Jose L. Figueroa-Camilo, Rosario Rivera-Guzman, Jaime Lopez-Canales, Juan Gonzalez-Ramos, Hector Rivera-Betancourt, Angel Luis Betancourt-Ortiz, Ricardo Betancourt-Ortiz, Jose Luis Diaz-Figueroa, Juan Garcia-Rodriguez, Luis X. Rivera-Rivera, Jose Trinidad-Pagan, Edgardo Ruiz-Torres, Bienvenido Lopez-Cruz, Jose E. Pena-Martinez, Raul Torres-Santana, David A. Bultron-Flores, Karen Lisbeth Figueroa-Gallartua, Jorge L. Cruz-Maldonado, Jose L. Torres-Agosto, Victor Castro-Rodriguez, Osvaldo Perez, Juan Gabriel De-La-Cruz-Guzman, Roberto Bruno-Diaz, Luis E. Sanchez-Encarnacion, Jonathan Carrasquillo-Colon, Noel Rodriguez-Adorno, Addier Encarnacion-Cruz, Idalia Maldonado-Pena, Jaime Rivera-Nieves, Dolores Alejandro-Rodriguez, Manuel Antonio Ferrer-Haddock, Ruben Delgado-Maldonado, Marlenis Carrasquillo-Quinones, Angel Luis Rivera-

		6/8/2009. Present were AUSA Dina Avila and USPO Charlette Agostini. Defendant was interviewed by the Pretrial Services Officer. Defendant was provided with copy of the Indictment and was advised of his rights. The Court reviewed and approved the CJA 23. Defendant will be represented by a member of the CJA Panel. Government requested temporary detention. Defendant remains under custody. **Arraignment and Detention Hearings are set for 6/11/2009 at 10:00 AM in Courtroom 9 before US Magistrate Judge Bruce J. McGiverin.** (Court Reporter FTR.)(Court Interpreter Tom Kavelin)Hearing held at 02:55 and ended at 03:03. (mcv) (Entered: 06/08/2009)
06/08/2009	292	ORDER OF TEMPORARY DETENTION as to (1) Joel Rivera-Alejandro. Signed by US Magistrate Judge Bruce J. McGiverin on 06/08/09.(mcv) (Entered: 06/08/2009)
06/08/2009	293	***SELECTED PARTIES***ORDER to MDC as to (1) Joel Rivera-Alejandro Signed by Clerk on 06/08/09.(mcv) (Entered: 06/08/2009)
06/08/2009	303	CJA 20 as to Joel Rivera-Alejandro: Appointment of Attorney Luz M. Rios-Rosario for Joel Rivera-Alejandro. Signed by Clerk on 06/08/09.(mcv) (Entered: 06/09/2009)
06/10/2009	304	INFORMATIVE motion *and Continuance* by Joel Rivera-Alejandro. (Rios-Rosario, Luz) (Entered: 06/10/2009)
06/11/2009	306	ORDER noted and granted 304 Informative Motion to Continue as to Joel Rivera-Alejandro (1). **Arraignment and Detention Hearing are hereby re-set for 6/22/2009 at 9:00 AM before US Magistrate Judge Bruce J. McGiverin.** Signed by US Magistrate Judge Bruce J. McGiverin on 6/11/09. (yo) (Entered: 06/11/2009)
06/22/2009	355	Minute for proceedings held before US Magistrate Judge Bruce J. McGiverin: Case called for Arraignment and Bail Hearings as to Joel Rivera-Alejandro (1) but not held on 6/22/2009. Pesent were AUSA Dina Avila and USPO Evelyn Jimenez. Attorney Luz M. Rios was not present in court, nor has the court received any Motion for Continuance. **Order to Show Cause issue as to why she should not be sanction in the amount of $150.00 for failure to appear before this Court today. Response due by 6/24/2009.** (Court Reporter FTR.) (mcv) (Entered: 06/22/2009)
06/22/2009	358	ORDER noted 211 Informative Motion ; granting 179 United States Motion for Leave to File Excess Pages; noted 280 Informative Motion; noted 232 Informative Motion; withdrawing 242 Motion to Stay and to Revoke; granted 243 United States' Motion to Remove Motion; noted 277 Informative Motion; granting retroactively 186 Motion for Extension of Time; noted 162 Informative Motion. Signed by Judge Carmen C. Cerezo on 6/22/09. (mmd) (Entered: 06/22/2009)
06/23/2009	368	ORDER as to (1) Joel Rivera-Alejandro: **Since the Court was advised that Counsel Luz M. Rios is taking care of her son at a Hospital outside the jurisdiction, the Order to Show Cause is hereby**

		for 9/2/2014. Release of Transcript Restriction set for 10/30/2014. (cib) (Entered: 07/27/2014)
07/27/2014	2803	Transcript of Suppression Hearing as to Joel Rivera-Alejandro (1), Carlos Rivera-Alejandro (2), Alexis Rivera-Alejandro (3), Idalia Maldonado-Pena (47), Dolores Alejandro-Rodriguez (49) held on 3-28-11, before Judge Bruce McGiverin. Court Reporter/Transcriber Crystal Inchaustegui, Telephone number 787-783-6623. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be available electronically to the public without redaction after 90 calendar days. The policy is located at www.prd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/21/2014. Redacted Transcript Deadline set for 9/2/2014. Release of Transcript Restriction set for 10/30/2014. (cib) (Entered: 07/27/2014)
07/27/2014		NOTICE of Docket Text Modification by Deputy Clerk re: 2800 Proposed Voir Dire. ***FILED IN ERROR-WRONG PDF. Document was re-filed at DE #2801 with correct signature date.*** (mr) (Entered: 07/28/2014)
07/28/2014	2805	Minute Entry for proceedings held before Judge Carmen C. Cerezo: Jury Selection as to Joel Rivera-Alejandro (1), Carlos Rivera-Alejandro (2), Alexis Rivera-Alejandro (3), Carlos E. Rivera-Rivera (7), Juan Rivera-George (14), Idalia Maldonado-Pena (47), Dolores Alejandro-Rodriguez (49) held on 7/28/2014. **Jury Trial set for 7/29/2014 at 9:30 am in Courtroom 4 before Judge Carmen C. Cerezo.** (Court Reporter Zulma Ruiz.)Hearing set for 09:30.Hearing held at 09:58.Hearing ended at 04:50.Interpreter Felix Toledo. (ct) Modified on 7/30/2014 to correct dft. # 48 for #49 present in proceedings (mr). (Entered: 07/29/2014)
07/28/2014	2806	***FILED IN ERROR***WRONG PDF***RESTRICTED* Jury List as to Joel Rivera-Alejandro (1), Carlos Rivera-Alejandro (2), Carlos E. Rivera-Rivera (7), Juan Rivera-George (14), Suanette Ramos-Gonzalez (19), Idalia Maldonado-Pena (47), Dolores Alejandro-Rodriguez (49) (ct) Modified on 7/29/2014 (su). (Entered: 07/29/2014)
07/28/2014	2807	*RESTRICTED* Jury List as to Joel Rivera-Alejandro (1), Carlos Rivera-Alejandro (2), Alexis Rivera-Alejandro (3), Carlos E. Rivera-Rivera (7), Juan Rivera-George (14), Suanette Ramos-Gonzalez (19), Idalia Maldonado-Pena (47), Dolores Alejandro-Rodriguez (49) (ct) (Entered: 07/29/2014)
07/28/2014		Minute Entry for proceedings held before Judge Carmen C. Cerezo:Jury Selection as to Joel Rivera-Alejandro (1), Carlos Rivera-Alejandro (2), Alexis Rivera-Alejandro (3), Carlos E. Rivera-Rivera (7), Juan Rivera-George (14), Suanette Ramos-Gonzalez (19), Idalia Maldonado-Pena (47), Dolores Alejandro-Rodriguez (49) held on 7/28/2014. Re: Dkt. #2805. Hearing set for 09:30.Hearing held at 09:58.Hearing ended at 04:50.Interpreter Felix Toledo. (kd) (Entered: 07/30/2014)

		90 calendar days. The policy is located at www.prd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/15/2014. Redacted Transcript Deadline set for 8/25/2014. Release of Transcript Restriction set for 10/23/2014. (cib) (Entered: 07/22/2014)
07/23/2014	2780	ORDER noted USA's 2758 Second Amended Notice of Intent to Use Expert Witness at Trial; finding as moot 2769 Motion in Limine as to Alexis Rivera-Alejandro (3); noted 2740 Informative Motion as to Jose Rivera-Serrano (13); noted 2770 2773 Motions Regarding Possible Conflict of Interest as to Juan Rivera-George (14). Signed by Judge Carmen C. Cerezo on 7/23/2014. (mld) (Entered: 07/23/2014)
07/24/2014	2792	MOTION under Rule 12 by USA as to Joel Rivera-Alejandro (1), Carlos Rivera-Alejandro (2), Alexis Rivera-Alejandro (3), Carlos E. Rivera-Rivera (7), Juan Rivera-George (14), Suanette Ramos-Gonzalez (19), Idalia Maldonado-Pena (47), Dolores Alejandro-Rodriguez (49). Suggestions in opposition/response due by 8/11/2014 (Avila-Jimenez, Dina) (Entered: 07/24/2014)
07/25/2014	2798	***EX-PARTE*** MOTION *for Supplemental Funds* by Joel Rivera-Alejandro (1). Suggestions in opposition/response due by 8/11/2014 (Attachments: # 1 Text of Proposed Order Proposed Order)(Milanes-Sanchez, Juan) Modified on 7/28/2014 as to title (mr). (Entered: 07/25/2014)
07/25/2014	2799	MOTION to Restrict Document by Joel Rivera-Alejandro (1). Suggestions in opposition/response due by 8/11/2014 (Milanes-Sanchez, Juan) (Entered: 07/25/2014)
07/27/2014	2800	***FILED IN ERROR-WRONG PDF*** Proposed Voir Dire by Joel Rivera-Alejandro (1) (Milanes-Sanchez, Juan) Modified on 7/28/2014 (mr). (Entered: 07/27/2014)
07/27/2014	2801	Proposed Voir Dire by Joel Rivera-Alejandro (1) (Milanes-Sanchez, Juan) (Entered: 07/27/2014)
07/27/2014	2802	Transcript of Further Suppression Hearing as to Joel Rivera-Alejandro (1), Carlos Rivera-Alejandro (2), Alexis Rivera-Alejandro (3), Idalia Maldonado-Pena (47), Dolores Alejandro-Rodriguez (49) held on 3-6-14, before Judge Bruce McGiverin. Court Reporter/Transcriber Crystal Inchaustegui, Telephone number 787-783-6623. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be available electronically to the public without redaction after 90 calendar days. The policy is located at www.prd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/21/2014. Redacted Transcript Deadline set

		Hearing set for 09:30.Hearing held at 09:30.Hearing ended at 04:50.Interpreter Palma. (ct) (Entered: 01/05/2016)
01/04/2016	4240	Jury Notes #2 and #3 (deliberations stage) as to Joel Rivera-Alejandro (1), Carlos Rivera-Alejandro (2), Alexis Rivera-Alejandro (3), Carlos E. Rivera-Rivera (7), Juan Rivera-George (14), Suanette Ramos-Gonzalez (19), Idalia Maldonado-Pena (47)** Images not uploaded as per Court's instructions. ** (ct) (ab). Modified on 5/18/2016 to add main document: *SEALED* NPV (ab). (Entered: 01/05/2016)
01/04/2016	4241	Jury Note #4 (deliberations stage) from Juror #8 as to Joel Rivera-Alejandro (1), Carlos Rivera-Alejandro (2), Alexis Rivera-Alejandro (3), Carlos E. Rivera-Rivera (7), Juan Rivera-George (14), Suanette Ramos-Gonzalez (19), Idalia Maldonado-Pena (47). **Image not uploaded as per Court's instructions.** (ct) (gav). (Entered: 01/05/2016)
01/05/2016	4242	***SELECTED PARTIES*** SEALED ORDER TO THE BUREAU OF PRISONS as to Joel Rivera-Alejandro (1), Carlos Rivera-Alejandro (2), Alexis Rivera-Alejandro (3), Carlos E. Rivera-Rivera (7), Juan Rivera-George (14), Suanette Ramos-Gonzalez (19) and Idalia Maldonado-Pena (47). Signed by Judge Carmen C. Cerezo on 1/5/2016. (mld) (Entered: 01/05/2016)
01/05/2016	4244	Minute Entry for proceedings held before Judge Carmen C. Cerezo:128th and last day Jury Trial as to Joel Rivera-Alejandro (1), Carlos Rivera-Alejandro (2), Alexis Rivera-Alejandro (3), Carlos E. Rivera-Rivera (7), Juan Rivera-George (14), Suanette Ramos-Gonzalez (19), Idalia Maldonado-Pena (47) held on 1/5/2016. Further deliberations. Jury Notes #2, 3 and 4 discussed. Jury Notes #5, 6, 7 and 8 received. Verdict reached and published. Suanette Ramos-Gonzalez (19) and Idalia Maldonado-Pena (47) are remanded. **Forfeiture Hearing set for 1/19/2016 and 1/20/2016 at 09:30 AM in Courtroom 4 before Judge Carmen C. Cerezo.** The jury has been summoned for said dates. (Court Reporter Zulma Ruiz.)Hearing set for 09:30.Hearing held at 09:30.Hearing ended at 05:20.Interpreter Palma/Smith. (ct) (Entered: 01/07/2016)
01/05/2016	4245	***SELECTED PARTIES***Minute Entry for proceedings held before Judge Carmen C. Cerezo: Ex-Parte Sidebar held during the 128th and last day Jury Trial as to Joel Rivera-Alejandro (1), Carlos Rivera-Alejandro (2), Alexis Rivera-Alejandro (3), Carlos E. Rivera-Rivera (7), Juan Rivera-George (14), Suanette Ramos-Gonzalez (19), Idalia Maldonado-Pena (47) on 1/5/2016. Re 4227 Motion Requesting Order, filed by Suanette Ramos-Gonzalez, Idalia Maldonado-Pena, Joel Rivera-Alejandro, Carlos E. Rivera-Rivera, Alexis Rivera-Alejandro, Juan Rivera-George, Carlos Rivera-Alejandro. (Court Reporter Zulma Ruiz.)(ct) (Entered: 01/07/2016)
01/05/2016	4246	Jury Notes #5, 6, 7 and 8 (deliberations stage) as to Joel Rivera-Alejandro (1), Carlos Rivera-Alejandro (2), Alexis Rivera-Alejandro (3), Carlos E. Rivera-Rivera (7), Juan Rivera-George (14), Suanette Ramos-Gonzalez (19), Idalia Maldonado-Pena (47).**Images not uploaded as per Court's instructions.** (ct) (ab). Modified on 5/18/2016 to add main document: *SEALED* NPV (ab). (Entered: 01/07/2016)

		10:00 AM Courtroom 4 before Judge Carmen C. Cerezo due to medical emergency involving Juror #9. (ct) (Entered: 12/29/2015)
12/30/2015	4233	Minute Entry for proceedings held before Judge Carmen C. Cerezo: 126th day of Jury Trial as to Joel Rivera-Alejandro (1), Carlos Rivera-Alejandro (2), Alexis Rivera-Alejandro (3), Carlos E. Rivera-Rivera (7), Juan Rivera-George (14), Suanette Ramos-Gonzalez (19), Idalia Maldonado-Pena (47) held on 12/30/2015. Deliberations started. Exhibit 154 unsealed in open court. **Further Jury Trial set for 1/4/2016 09:30 AM in Courtroom 4 before Judge Carmen C. Cerezo.** (Court Reporter Zulma Ruiz.)Hearing set for 10:00.Hearing held at 10:21.Hearing ended at 05:05.Interpreter Palma/Smith. (ct) (Entered: 12/31/2015)
12/30/2015	4234	Jury Note #1 (deliberations stage) as to Joel Rivera-Alejandro (1), Carlos Rivera-Alejandro (2), Alexis Rivera-Alejandro (3), Carlos E. Rivera-Rivera (7), Juan Rivera-George (14), Suanette Ramos-Gonzalez (19), Idalia Maldonado-Pena (47). *Image unavailable as per Judge's instructions. (ct) (ab). Modified on 5/18/2016 to add attachment: NPV (ab). (Entered: 12/31/2015)
01/04/2016	4235	MINUTE ORDER as to Joel Rivera-Alejandro (1), Carlos Rivera-Alejandro (2), Alexis Rivera-Alejandro (3), Carlos E. Rivera-Rivera (7), Juan Rivera-George (14), Suanette Ramos-Gonzalez (19), Idalia Maldonado-Pena (47) re: forfeitability of property. (ct) (Entered: 01/04/2016)
01/04/2016	4236	INFORMATIVE Motion regarding Jury Trial for Forfeiture Allegation (COUNT SEVEN) by Joel Rivera-Alejandro (1), Carlos Rivera-Alejandro (2), Alexis Rivera-Alejandro (3), Carlos E. Rivera-Rivera (7), Juan Rivera-George (14), Suanette Ramos-Gonzalez (19), Idalia Maldonado-Pena (47). Suggestions in opposition/response due by 1/22/2016 (Burgos-Amador, Jedrick) (Entered: 01/04/2016)
01/04/2016	4237	MINUTE ORDER noted 4236 Informative Motion as to Joel Rivera-Alejandro (1), Carlos Rivera-Alejandro (2), Alexis Rivera-Alejandro (3), Carlos E. Rivera-Rivera (7), Juan Rivera-George (14), Suanette Ramos-Gonzalez (19), Idalia Maldonado-Pena (47): The government shall immediately submit the proposed special verdict form. Hearing on forfeitability to be scheduled. (ct) (Entered: 01/04/2016)
01/04/2016	4238	Proposed Verdict Form by USA as to Joel Rivera-Alejandro (1), Carlos Rivera-Alejandro (2), Alexis Rivera-Alejandro (3), Carlos E. Rivera-Rivera (7), Juan Rivera-George (14), Suanette Ramos-Gonzalez (19), Idalia Maldonado-Pena (47) (Bonhomme, Vanessa) (Entered: 01/04/2016)
01/04/2016	4239	Minute Entry for proceedings held before Judge Carmen C. Cerezo:127th day of Jury Trial as to Joel Rivera-Alejandro (1), Carlos Rivera-Alejandro (2), Alexis Rivera-Alejandro (3), Carlos E. Rivera-Rivera (7), Juan Rivera-George (14), Suanette Ramos-Gonzalez (19), Idalia Maldonado-Pena (47) held on 1/4/2016. Jury Notes #2 and #3 (deliberations stage) received. Jury Note #3 to be discussed during tomorrow's session. **Further Jury Trial set for 1/5/2016 at 9:30 am before Judge Carmen C. Cerezo.** (Court Reporter Zulma Ruiz.)

05/15/2018	4990	NOTICE OF APPEAL re 4990 Judgment by Joel Rivera-Alejandro NOTICE TO COUNSEL: Counsel should register for a First Circuit CM/ECF Appellate Filer Account at http://pacer.psc.uscourts.gov/cmecf/. Counsel should also review the First Circuit requirements for electronic filing by visiting the CM/ECF Information section at http://www.ca1.uscourts.gov/efiling.htm (Alcala-Laboy, Diego) Modified to add relationship on 5/16/2018 (idg). (Entered: 05/15/2018)
05/15/2018	4993	*RESTRICTED* USM Return of Notice of Forfeiture, Preliminary Order of Forfeiture executed as to Joel Rivera-Alejandro, via attorney Diego H. Alcala-Laboy on 5/14/2018. (idg) (Entered: 05/18/2018)
05/15/2018	4994	*RESTRICTED* USM Return of Notice of Forfeiture, Preliminary Order of Forfeiture executed as to Juan Rivera-George, via attorney Jose R. Olmo-Rodriguez on 5/14/2018. (idg) (Entered: 05/18/2018)
05/15/2018	4995	*RESTRICTED* USM Return of Notice of Forfeiture, Preliminary Order of Forfeiture executed as to Suanette Ramos-Gonzalez, via attorney Raymond L. Sanchez-Maceira on 5/14/2018 (idg) (Entered: 05/18/2018)
05/15/2018	4996	*RESTRICTED* USM Return of Notice of Forfeiture, Preliminary Order of Forfeiture executed as to Idalia Maldonado-Pena, via attorney Mariangela Tirado-Vales on 5/14/2018. (idg) (Entered: 05/18/2018)
05/15/2018	4997	*RESTRICTED* USM Return of Notice of Forfeiture, Preliminary Order of Forfeiture executed as to Scotia Bank, Legal Division on 5/11/2018. (idg) (Entered: 05/18/2018)
05/15/2018	4998	*RESTRICTED* USM Return of Notice of Forfeiture, Preliminary Order of Forfeiture executed as to Property Registrar of San Juan, Section IV on 5/14/2018. (idg) (Entered: 05/18/2018)
05/18/2018	5005	*RESTRICTED* USM Return of Notice of Forfeiture, Preliminary Order of Forfeiture executed as to Carlos Rivera-Alejandro, via attorney Jedrick H. Burgos-Amador on 5/15/2018. (idg) (Entered: 05/23/2018)
05/24/2018	5007	Certified and Transmitted Record on Appeal as to Joel Rivera-Alejandro (1) to US Court of Appeals re 4990 Notice of Appeal - Final Judgment, [Docket Entries 4989 & 4990] (xi) (Entered: 05/24/2018)
05/25/2018	5008	***SELECTED PARTIES*** Statement of Reasons as to Joel Rivera-Alejandro (1). Signed by Judge Carmen C. Cerezo on 5/15/2018. (nat) (Entered: 05/25/2018)
05/25/2018	5009	USCA Case Number 18-1496 for 4990 Notice of Appeal - Final Judgment, filed by Joel Rivera-Alejandro (1). (xi) (Entered: 05/25/2018)
05/25/2018	5010	Transcript of Closing Arguments, Afternoon Session, as to Joel Rivera-Alejandro, Carlos Rivera-Alejandro, Alexis Rivera-Alejandro, Carlos E. Rivera-Rivera, Juan Rivera-George, Suanette Ramos-Gonzalez, Idalia Maldonado-Pena held on December 18, 2015, before Judge Carmen C. Cerezo. Court Reporter/Transcriber Zulma M. Ruiz, Telephone number 787-772-3375. COA Number: 17-1551 as to JUAN RIVERA-GEORGE only.

		Transcript Deadline set for 6/14/2018. Release of Transcript Restriction set for 8/13/2018. (zr) (Entered: 05/14/2018)
05/14/2018	4986	Transcript of Motion Hearing as to Joel Rivera-Alejandro, Carlos Rivera-Alejandro, Alexis Rivera-Alejandro, Carlos E. Rivera-Rivera, Juan Rivera-George, Suanette Ramos-Gonzalez, Idalia Maldonado-Pena held on December 17, 2015, before Judge Carmen C. Cerezo. Court Reporter/Transcriber Zulma M. Ruiz, Telephone number 787-772-3375. COA Number: 17-1551 as to JUAN RIVERA-GEORGE only. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be available electronically to the public without redaction after 90 calendar days. The policy is located at www.prd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/4/2018. Redacted Transcript Deadline set for 6/14/2018. Release of Transcript Restriction set for 8/13/2018. (zr) (Entered: 05/14/2018)
05/15/2018	4987	***SELECTED PARTIES*** The changes ordered by the Court in the presentence investigation report have been effected, paragraph 132, as to USA, Probation Office, Joel Rivera-Alejandro (U.S. Probation Officer, Eddebbie Cofresi) (Entered: 05/15/2018)
05/15/2018	4988	Minute Entry for proceedings held before Judge Carmen C. Cerezo: Sentencing held on 5/15/2018 for Joel Rivera-Alejandro (1). Present: AUSA Vanessa Bonhomme, Atty. Diego Alcala and USPO Eddebbie Cofresi. Defendant was U/C, present in court and assisted by a certified court interpreter. Statements in support of mitigation of punishment heard on behalf of the defense. Defendant's allocution heard. Government's statement was heard. Count(s) 1, 2, 3, 4, 5, 6, IMPR: Three hundred and sixty (360) months as to Counts 1, 2, 3 & 4, one hundred and twenty (120) months as to Count 5 and two hundred and forty (240) months as to Count 6, all to be served concurrently with each other. SRT: Ten (10) years as to Counts 1, 2 & 4, eight (8) years as to Count 3, four (4) years as to Count 5, and three (3) years as to Count 6, all to be served concurrently with each other. No fine. SMA of $100.00 per count. Forfeiture. As per USPO Cofresi's request the PSR shall be amended. (Court Reporter Zulma Ruiz.) Hearing set for 11:00. Hearing held at 11:10. Hearing ended at 01:20. Interpreter Mayra Cardona. (nat) (Entered: 05/15/2018)
05/15/2018	4989	JUDGMENT as to Joel Rivera-Alejandro (1), Count(s) 1, 2, 3, 4, 5, 6, IMPR: Three hundred and sixty (360) months as to Counts 1, 2, 3 & 4, one hundred and twenty (120) months as to Count 5 and two hundred and forty (240) months as to Count 6, all to be served concurrently with each other. SRT: Ten (10) years as to Counts 1, 2 & 4, eight (8) years as to Count 3, four (4) years as to Count 5, and three (3) years as to Count 6, all to be served concurrently with each other. No fine. SMA of $100.00 per count. Forfeiture. Signed by Judge Carmen C. Cerezo on 5/15/2018. (nat) (Entered: 05/15/2018)

08/12/2019	5 pg, 277.66 KB	MOTION to file appendix under seal filed by Appellant Joel Rivera-Alejandro. Certificate of service dated 08/12/2019. [18-1496] (GRC) [Entered: 08/13/2019 04:26 PM]
08/12/2019		PLEADING tendered: Sealed Appendix filed by Appellant Joel Rivera-Alejandro. Certificate of service dated 08/08/2019. [18-1496] (GRC) [Entered: 08/14/2019 10:43 AM]
08/13/2019	1 pg, 10.27 KB	ORDER entered by Rogeriee Thompson, Appellate Judge: Appellant Joel Rivera-Alejandro's untimely motion for leave to file an oversized opening brief containing up to 31,561 words is granted. In the future, the court expects that any other motions will be timely filed. See 1st Cir. R. 32.4 (requiring motions to file oversized principal briefs be made at least ten days in advance of the deadline for filing the brief). [18-1496] (GRC) [Entered: 08/13/2019 03:36 PM]
08/16/2019	6 pg, 98.14 KB	MOTION for interim payment of attorney fees filed by Appellant Joel Rivera-Alejandro. Certificate of service dated 08/16/2019. [18-1496] CLERK'S NOTE: Relief selection was incorrect. Correction made by clerk's office. No further action required. (RFC) [Entered: 08/16/2019 10:14 AM]
08/16/2019	1 pg, 7.75 KB	ORDER entered: Appellant's motion for leave to file a supplemental appendix under seal is allowed. The sealed supplemental appendix is accepted for filing as of this date. [18-1496] (TS) [Entered: 08/16/2019 12:39 PM]
08/16/2019		SEALED SUPPLEMENTAL APPENDIX filed by Appellant Joel Rivera-Alejandro. Number of volumes: 1. Number of copies: 5. [18-1496] (TS) [Entered: 08/16/2019 12:42 PM]
08/29/2019	1 pg, 25.35 KB	ORDER entered by David J. Barron,* Appellate Judge, granting motion for interim payment filed by Appellant Joel Rivera-Alejandro. *Designee of the Chief Judge, United States Court of Appeals for the First Circuit. [18-1496] (GRC) [Entered: 08/29/2019 05:08 PM]
09/17/2019	6 pg, 103.47 KB	MOTION to extend time to file *brief and appendix* filed by Appellee US in 17-1432, 17-1551, 17-1681, 18-1184, 18-1496. Certificate of service dated 09/17/2019. [17-1432, 17-1551, 17-1681, 18-1184, 18-1496] (DL) [Entered: 09/17/2019 11:52 AM]
09/24/2019	2 pg, 13.36 KB	ORDER entered: Because all the appellants' briefs have not been accepted for filing, the deadline for filing the appellee's brief was improperly set. The September 10, 2019 Appellee's Briefing Notice is withdrawn. Accordingly, appellee's September 17, 2019 motion to extend the time to file its brief is premature. [17-1432, 17-1551, 17-1681, 18-1184, 18-1496] (GRC) [Entered: 09/24/2019 09:29 AM]
10/02/2019	1 pg, 10.25 KB	ORDER entered by Rogeriee Thompson, Appellate Judge: The motion to unseal two district court documents (and thus to allow the documents to be included in the public addendum) is denied without prejudice to reconsideration at a later date by the panel that decides the merits of the appeal. Counsel's attention is directed to 1st Cir. R. 28.0(c) for guidance on the inclusion of sealed matters in the addendum. Counsel's attention is also directed to 1st Cir. R. 11.0(d)(2), which instructs counsel that in any motion filed with this court, counsel is "not to disclose the substance of the sealed material." The instant motion appears to violate this rule. Accordingly, **the clerk is directed to seal the instant motion**. Counsel is admonished to ensure that all future filings are in compliance with 1st Cir. R. 11.0(d)(2). [18-1496] (GRC) [Entered: 10/02/2019 09:25 AM]
10/08/2019	1 pg, 13.55 KB	ORDER directing Appellant Joel Rivera-Alejandro to file a conforming brief. Brief due 10/15/2019. [18-1496] (CMP) [Entered: 10/08/2019 03:58 PM]
10/15/2019	230 pg, 3.46 MB	BRIEF tendered by Appellant Joel Rivera-Alejandro. [18-1496] (RFC) [Entered: 10/15/2019 06:41 AM]
10/17/2019	232 pg, 3.78 MB	APPELLANT'S BRIEF filed by Appellant Joel Rivera-Alejandro. Certificate of service dated 10/15/2019. Nine paper copies identical to that of the electronically filed brief must be submitted so that they are received by the court on or before 10/24/2019. Brief due 11/14/2019 for APPELLEE United States. [18-1496] (AMM) [Entered: 10/17/2019 02:48 PM]
10/18/2019		PLEADING tendered: SEALED ADDENDUM filed by Appellant Joel Rivera-Alejandro. Number of Copies: 5. [18-1496] (AMM) [Entered: 10/18/2019 02:43 PM]
10/18/2019	5 pg, 280.28 KB	MOTION to file addendum under seal filed by Appellant Joel Rivera-Alejandro. Certificate of service dated 10/15/2019. [18-1496] (GRC) [Entered: 10/21/2019 03:18 PM]
10/21/2019	6 pg, 104.15 KB	MOTION to extend time to file *brief and appendix* filed by Appellee US in 17-1432, 17-1551, 17-1681, 18-1184, 18-1496. Certificate of service dated 10/21/2019. [17-1432, 17-1551, 17-1681, 18-1184, 18-1496] (DL) [Entered: 10/21/2019 02:09 PM]
10/21/2019		NINE (9) paper copies of appellant/petitioner brief [6290347-2] submitted by Appellant Joel Rivera-Alejandro. [18-1496] (JMK) [Entered: 10/22/2019 08:59 AM]
10/23/2019	1 pg, 10.05 KB	ORDER entered: Upon consideration of defendant-appellant Joel Rivera-Alejandro's motion to file a supplemental addendum under seal, the motion is allowed. The tendered supplemental addendum is accepted for filing on this date. [18-1496]. CLERK'S NOTE: Docket entry was edited to attach a missing document. (GRC) [Entered: 10/23/2019 02:27 PM]
10/23/2019		SEALED SUPPLEMENTAL ADDENDUM filed by Appellant Joel Rivera-Alejandro. Number of copies: 5.

		[18-1496] (GRC) [Entered: 10/23/2019 03:04 PM]
10/28/2019		SEALED SUPPLEMENTAL ADDENDUM filed by Appellant Joel Rivera-Alejandro. Number of copies: 4. [18-1496] (AMM) [Entered: 10/28/2019 04:54 PM]
11/04/2019	2 pg, 13.29 KB	ORDER entered by Jeffrey R. Howard, Chief Appellate Judge: Upon consideration of Appellee United States' opposed motion to extend time to file its brief, the motion is granted. Appellee's responsive brief is due on or before February 12, 2020. No further extension of this deadline should be expected. [17-1432, 17-1551, 17-1681, 18-1184, 18-1496] (GRC) [Entered: 11/04/2019 05:31 PM]
01/17/2020	6 pg, 84.92 KB	MOTION for leave to file oversized *answering brief* filed by Appellee US in 17-1432, 17-1551, 17-1681, 18-1184, 18-1496. Certificate of service dated 01/17/2020. [17-1432, 17-1551, 17-1681, 18-1184, 18-1496] (DL) [Entered: 01/17/2020 04:07 PM]
01/27/2020	2 pg, 13.35 KB	ORDER entered by David J. Barron, Appellate Judge: Upon consideration, appellee United States' motion for leave to file an oversized, consolidated answering brief containing up to 70,000 words is allowed. Appellee's brief remains due on or before **February 12, 2020**. [17-1432, 17-1551, 17-1681, 18-1184, 18-1496] (GRC) [Entered: 01/27/2020 02:22 PM]
02/04/2020	4 pg, 70.28 KB	MOTION for leave to file supplemental appendix filed by Appellee US in 17-1432, 17-1551, 17-1681, 18-1184, 18-1496. Certificate of service dated 02/04/2020. [17-1432, 17-1551, 17-1681, 18-1184, 18-1496] (DL) [Entered: 02/04/2020 02:07 PM]
02/07/2020	2 pg, 13.83 KB	ORDER entered: The government's motion for leave to file a supplemental appendix is allowed. The supplemental appendix is due on or before **February 12, 2020**. [17-1432, 17-1551, 17-1681, 18-1184, 18-1496] (GB) [Entered: 02/07/2020 10:23 AM]
02/11/2020	274 pg, 750.77 KB	BRIEF tendered by Appellee US in 17-1432, 17-1551, 17-1681, 18-1184, 18-1496. [17-1432, 17-1551, 17-1681, 18-1184, 18-1496] (DL) [Entered: 02/11/2020 02:38 PM]
02/12/2020		PLEADING tendered: FIVE (5) Paper copies of supplemental appendix filed by Appellee US in 17-1432, 17-1551, 17-1681, 18-1184, 18-1496. Certificate of service dated 02/11/2020. [17-1432, 17-1551, 17-1681, 18-1184, 18-1496] (LIM) [Entered: 02/12/2020 02:57 PM]
02/12/2020		SUPPLEMENTAL APPENDIX filed by Appellee US in 17-1432, 17-1551, 17-1681, 18-1184, 18-1496. Number of volumes: 1. Number of copies: 5. Certificate of service dated 02/12/2020. [17-1432, 17-1551, 17-1681, 18-1184, 18-1496] (LIM) [Entered: 02/18/2020 11:21 AM]
02/18/2020	274 pg, 750.77 KB	APPELLEE'S BRIEF filed by Appellee US in 17-1432, 17-1551, 17-1681, 18-1184, 18-1496. Certificate of service dated 02/11/2020. Nine paper copies identical to that of the electronically filed brief must be submitted so that they are received by the court on or before 02/25/2020. [17-1432, 17-1551, 17-1681, 18-1184, 18-1496] (LIM) [Entered: 02/18/2020 11:11 AM]
02/18/2020		BRIEFING schedule updated. Reply brief due 03/10/2020 for appellant Joel Rivera-Alejandro. [18-1496] (GRC) [Entered: 02/18/2020 12:30 PM]
02/19/2020		NINE (9) paper copies of appellee/respondent brief [6317732-2] submitted by Appellee US in 17-1432, 17-1551, 17-1681, 18-1184, 18-1496. [17-1432, 17-1551, 17-1681, 18-1184, 18-1496] (ATC) [Entered: 02/19/2020 02:18 PM]
03/10/2020	5 pg, 93.29 KB	MOTION to extend time to file *reply brief* filed by Appellant Joel Rivera-Alejandro. Certificate of service dated 03/10/2020. [18-1496] (RFC) [Entered: 03/10/2020 06:57 AM]
03/12/2020	1 pg, 9.81 KB	ORDER granting motion to extend time to file brief filed by Appellant Joel Rivera-Alejandro. Reply brief due 03/24/2020 for appellant Joel Rivera-Alejandro. [18-1496] (GRC) [Entered: 03/12/2020 10:22 AM]
03/23/2020	28 pg, 370.13 KB	BRIEF tendered by Appellant Joel Rivera-Alejandro. [18-1496] (RFC) [Entered: 03/23/2020 06:55 AM]
03/31/2020	1 pg, 23.96 KB	ORDER directing Appellant Joel Rivera-Alejandro to file a conforming brief. Reply brief due 05/07/2020 for appellant Joel Rivera-Alejandro. [18-1496] (GRC) [Entered: 03/31/2020 02:10 PM]
04/01/2020	29 pg, 373.19 KB	BRIEF tendered by Appellant Joel Rivera-Alejandro. [18-1496] (RFC) [Entered: 04/01/2020 06:46 PM]
04/09/2020	1 pg, 14.7 KB	ORDER directing Appellant Joel Rivera-Alejandro to file a conforming reply brief. Reply brief due 05/18/2020 for appellant Joel Rivera-Alejandro. [18-1496] (GRC) [Entered: 04/09/2020 11:03 AM]
04/13/2020	31 pg, 388.64 KB	BRIEF tendered by Appellant Joel Rivera-Alejandro. [18-1496] (RFC) [Entered: 04/13/2020 07:22 AM]
04/13/2020	31 pg, 384.47 KB	REPLY BRIEF filed by Appellant Joel Rivera-Alejandro. Certificate of service dated 04/13/2020. Nine paper copies identical to that of the electronically filed brief must be submitted so that they are received by the court on or before 05/20/2020. [18-1496] (LIM) [Entered: 04/13/2020 08:51 AM]
04/13/2020		MOTION to join in or adopt electronically filed brief [6273585-2], reply brief [6331561-2] filed by Appellant

	4 pg, 147.2 KB	Suanette Ramos-Gonzalez in 17-1681. Certificate of service dated 04/13/2020. [17-1681, 18-1496] (RLS) [Entered: 04/13/2020 01:42 PM]
04/17/2020	3 pg, 15.81 KB	ORDER entered: Defendant-appellant Suanette Ramos-Gonzalez in Appeal No. 17-1681 has filed a motion for leave to join/adopt the arguments presented as issue III in the brief filed by co-defendant-appellant Joel Rivera-Alejandro on August 8, 2019 in Appeal No. 18-1496. Pursuant to Fed. R. App. P. 28(i), leave of court is not required for the adoption; accordingly, the motion is noted without a ruling. However, Suanette Ramos-Gonzalez should be aware that she bears whatever risks adoption by reference entails, including that the court will deem the argument not transferable or waived. SeeUnited States v. Casas, 425 F.3d 23, 30 n.2 (1st Cir. 2005); United States v. David, 940 F.2d 722, 737 (1st Cir. 1991); United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990). [17-1432, 17-1551, 17-1681, 18-1184, 18-1496] (GRC) [Entered: 04/17/2020 10:35 AM]
05/29/2020	1 pg, 9.95 KB	NOTICE of default issued for failure to file paper copies of the reply brief [6331561-2]. Paper copies of the brief are due 06/05/2020 for Joel Rivera-Alejandro. [18-1496] (GRC) [Entered: 05/29/2020 01:52 PM]
06/03/2020		NINE (9) paper copies of reply brief [6331561-2] submitted by Appellant Joel Rivera-Alejandro. [18-1496] (ATC) [Entered: 06/03/2020 11:50 AM]
09/15/2020	3 pg, 17.7 KB	CASE calendared: Consistent with public health guidance and ongoing efforts to mitigate the risk of community transmission of COVID-19, the court will conduct oral argument remotely in this case on Thursday, October 29, 2020 at 9:30 a.m., in lieu of in-person appearance. There will be no continuance except for grave cause. Designation form due 09/22/2020. [17-1432, 17-1551, 17-1681, 18-1184, 18-1496] (DJT) [Entered: 09/15/2020 05:14 PM]
09/16/2020	1 pg, 20.96 KB	DESIGNATION of attorney presenting oral argument filed by Attorney Rafael F. Castro Lang for Appellant Joel Rivera-Alejandro. Certificate of service dated 09/16/2020. [18-1496] (RFC) [Entered: 09/16/2020 09:31 AM]
09/16/2020	2 pg, 11.91 KB	ORDER entered: Inasmuch as these cases have been calendared for the Court's October 29, 2020 sitting, the parties are hereby ordered to refile electronically any previously filed appendix, or supplemental appendix, filed in paper before the Court's April 20, 2020 order requiring appendices to be filed electronically and in paper. The parties' electronically filed appendices are due by **September 23, 2020**. [17-1432, 17-1551, 17-1681, 18-1184, 18-1496] (MNH) [Entered: 09/16/2020 11:45 AM]
09/16/2020	59 pg, 1.04 MB	APPENDIX tendered by Appellee US in 17-1432, 17-1551, 17-1681, 18-1184, 18-1496. Certificate of service dated 09/16/2020. [17-1432, 17-1551, 17-1681, 18-1184, 18-1496] (DL) [Entered: 09/16/2020 02:06 PM]
09/16/2020	59 pg, 1006.15 KB	SUPPLEMENTAL APPENDIX filed by Appellee US in 17-1432, 17-1551, 17-1681, 18-1184, 18-1496. [17-1432, 17-1551, 17-1681, 18-1184, 18-1496] (AVN) [Entered: 09/16/2020 03:10 PM]
09/18/2020	1 pg, 29.89 KB	DESIGNATION of attorney presenting oral argument filed by Attorney Daniel Lerman for Appellee US in 17-1432, 17-1551, 17-1681, 18-1184, 18-1496. Certificate of service dated 09/18/2020. [17-1432, 17-1551, 17-1681, 18-1184, 18-1496] (DL) [Entered: 09/18/2020 01:51 PM]
09/18/2020	851 pg, 25.88 MB	APPENDIX tendered by Appellant Joel Rivera-Alejandro. Certificate of service dated 09/18/2020. [18-1496] (RFC) [Entered: 09/18/2020 01:58 PM]
09/18/2020	851 pg, 25.89 MB	APPENDIX filed by Appellant Joel Rivera-Alejandro. Number of volumes: 2. [18-1496] (AVN) [Entered: 09/18/2020 03:23 PM]
09/28/2020	3 pg, 79.13 KB	MOTION to waive oral argument and submit case on the briefs filed by Appellant Suanette Ramos-Gonzalez in 17-1681. Certificate of service dated 09/28/2020. [17-1681, 17-1432, 17-1551, 18-1184, 18-1496, 18-1599, 19-1376, 20-1271] (RLS) [Entered: 09/28/2020 12:07 PM]
09/29/2020	4 pg, 34.56 KB	MOTION *Adopting Due Process Violation Issue Raised by Appellant Carlos Rivera-Alejandro in Appeal No. 18-1184* filed by Appellant Joel Rivera-Alejandro. Certificate of service dated 09/29/2020. [18-1496] (RFC) [Entered: 09/29/2020 11:32 AM]
09/29/2020	1 pg, 122.85 KB	Mail returned as undeliverable to Appellant Idalia Maldonado-Pena in 17-1432. Copy of Notice issued September 15, 2020. Forwarding address unknown (BOP website indicates defendant was released). [17-1432, 17-1551, 17-1681, 18-1184, 18-1496] (JMK) [Entered: 10/02/2020 04:42 PM]
09/30/2020	1 pg, 9.69 KB	ORDER entered by Sandra L. Lynch, Appellate Judge: Defendant-Appellant Joel Rivera-Alejandro's motion adopting an argument relating to due process violations raised by Defendant-Appellant Carlos Rivera-Alejandro in 18-1184 is noted and decision on this matter is reserved. [18-1496] (GRC) [Entered: 09/30/2020 11:19 AM]
10/05/2020	1 pg, 122.55 KB	Mail returned as undeliverable to Appellant Suanette Ramos-Gonzalez in 17-1681. Copy of Calendaring notice issued September 15, 2020. Forwarding address unknown (BOP website indicates defendant was released). [17-1432, 17-1551, 17-1681, 18-1184, 18-1496] (ATC) [Entered: 10/05/2020 03:32 PM]
10/06/2020	2 pg, 11.54 KB	ORDER entered by Sandra L. Lynch, Appellate Judge: Upon consideration of appellant's motion, we hereby remove this matter from the Thursday, October 29, 2020 oral argument list. This matter shall be submitted for a decision on the briefs without oral argument. The consolidated appeals, United States v.

		Maldonado-Pena, Appeal No. 17-1432, United States v. Rivera-George, Appeal No. 17-1551, United States v. Rivera-Alejandro, Appeal No. 18-1184, and United States v. Rivera-Alejandro, Appeal No. 18-1496, shall be called as scheduled. So ordered. [17-1681, 17-1432, 17-1551, 18-1184, 18-1496] (DJT) [Entered: 10/06/2020 03:59 PM]
10/12/2020	4 pg, 271.66 KB	CITATION of supplemental authorities pursuant to Fed. R. App. P. 28(j) filed by Appellant Joel Rivera-Alejandro. Certificate of service dated 10/12/2020. [18-1496] (RFC) [Entered: 10/12/2020 10:26 AM]
10/13/2020	2 pg, 130.57 KB	RESPONSE to citation of supplemental authorities pursuant to Fed. R. App. P. 28(j) [6373844-2] filed by Appellee US. Certificate of service dated 10/13/2020. [18-1496] (DL) [Entered: 10/13/2020 11:59 AM]
10/19/2020	1 pg, 474.35 KB	DESIGNATION of attorney presenting oral argument filed by Attorney Rafael F. Castro Lang for Appellant Joel Rivera-Alejandro. Certificate of service dated 10/19/2020. [18-1496] (RFC) [Entered: 10/19/2020 10:14 AM]
10/19/2020	1 pg, 115.06 KB	Mail returned as undeliverable to Appellant Idalia Maldonado-Pena in 17-1432. Copy of Order entered October 6, 2020. Forwarding address unknown (BOP website indicates defendant was released). [17-1432, 17-1551, 17-1681, 18-1184, 18-1496] (JMK) [Entered: 10/21/2020 11:12 AM]
10/26/2020	1 pg, 119.39 KB	Mail returned as undeliverable to Appellant Suanette Ramos-Gonzalez in 17-1681. Copy of Order entered October 6, 2020. Forwarding address unknown (BOP website indicates defendant was released). [17-1681, 17-1432, 17-1551, 18-1184, 18-1496] (JMK) [Entered: 10/29/2020 11:39 AM]
10/27/2020	22 pg, 408.35 KB	CITATION of supplemental authorities pursuant to Fed. R. App. P. 28(j) filed by Appellee US in 17-1432, 17-1551, 17-1681, 18-1184, 18-1496. Certificate of service dated 10/27/2020. [17-1432, 17-1551, 17-1681, 18-1184, 18-1496] (DL) [Entered: 10/27/2020 06:49 PM]
10/29/2020		CASE argued. Panel: Sandra L. Lynch, Appellate Judge; Rogeriee Thompson, Appellate Judge and William J. Kayatta, Jr., Appellate Judge. Arguing attorneys: Mariangela Tirado-Vales for Idalia Maldonado-Pena and Daniel Lerman for US in 17-1432, Jose Ramon Olmo-Rodriguez for Juan Rivera-George and Daniel Lerman for US in 17-1551, Rachel Brill for Carlos Rivera-Alejandro and Daniel Lerman for US in 18-1184, Rafael F. Castro Lang for Joel Rivera-Alejandro and Daniel Lerman for US in 18-1496. [17-1432, 17-1551, 18-1184, 18-1496] (DJT) [Entered: 10/29/2020 01:28 PM]
10/30/2020	8 pg, 139.46 KB	INFORMATIVE MOTION Informing Government Misstated the Record During Oral Argument filed by Appellant Joel Rivera-Alejandro. Certificate of service dated 10/30/2020. [18-1496] CLERK'S NOTE: Docket entry was edited to modify the docket text. [18-1496] (RFC) [Entered: 10/30/2020 09:37 AM]
10/30/2020	34 pg, 207.71 KB	RESPONSE filed by Appellee US to notice [6378360-2]. Certificate of service dated 10/30/2020. [18-1496] (DL) [Entered: 10/30/2020 04:49 PM]
11/02/2020	2 pg, 121.87 KB	LETTER regarding *Oral Argument* filed by Attorney Daniel Lerman for Appellee US in 17-1432, 17-1551, 17-1681, 18-1184, 18-1496. Certificate of service dated 11/02/2020. [17-1432, 17-1551, 17-1681, 18-1184, 18-1496] (DL) [Entered: 11/02/2020 03:35 PM]
06/30/2021	122 pg, 447.94 KB	OPINION issued by Sandra L. Lynch, Appellate Judge; Rogeriee Thompson, Appellate Judge and William J. Kayatta, Jr., Appellate Judge. Published. [17-1432, 17-1551, 17-1681, 18-1184, 18-1496] (JMK) [Entered: 06/30/2021 03:37 PM]
06/30/2021	1 pg, 116.49 KB	JUDGMENT. Affirmed. [18-1496] (JMK) [Entered: 06/30/2021 04:19 PM]
06/30/2021	10 pg, 733.41 KB	URLs Cited in Court Opinion dated 06/30/2021 [6431521-2]. [17-1551, 17-1681, 18-1184, 18-1496] (JMK) [Entered: 07/01/2021 10:22 AM]
07/14/2021	4 pg, 90.56 KB	MOTION to extend time to file a petition for rehearing filed by Appellant Joel Rivera-Alejandro. Certificate of service dated 07/14/2021. [18-1496] (RFC) [Entered: 07/14/2021 08:17 AM]
07/14/2021	1 pg, 7.77 KB	ORDER entered by Rogeriee Thompson, Appellate Judge: Defendant-appellant Joel Rivera Alejandro's motion for extension of time, from July 14, 2021 through July 30, 2021, to file a petition for rehearing and/or rehearing en banc is granted. [18-1496] (JMK) [Entered: 07/14/2021 05:08 PM]
07/26/2021	16 pg, 297.77 KB	PETITION for rehearing and rehearing en banc filed by Appellant Joel Rivera-Alejandro. Certificate of service dated 07/26/2021. [18-1496] (RFC) [Entered: 07/26/2021 08:15 AM]
08/27/2021	2 pg, 96.37 KB	ERRATA issued by court to opinion (published) [6431521-2]. [17-1432, 17-1551, 17-1681, 18-1184, 18-1496] (SBT) [Entered: 08/27/2021 11:54 AM]
08/31/2021	1 pg, 8.18 KB	ORDER entered by Jeffrey R. Howard, Chief Appellate Judge; Sandra L. Lynch, Appellate Judge; Rogeriee Thompson, Appellate Judge; William J. Kayatta, Jr., Appellate Judge and David J. Barron, Appellate Judge: The petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and the petition for rehearing en banc be denied. [18-1496] (JMK) [Entered: 08/31/2021 01:56 PM]

		7/17/2017 at 4:45 PM in Courtroom 7. Signed by Judge Carmen C. Cerezo on 6/13/2017. (mld) (Entered: 06/13/2017)
06/26/2017	4755	ORDER ADDRESSED TO DEFENDANT JOEL RIVERA-ALEJANDRO (1) ON ISSUE OF CRACK TO POWDER COCAINE RATIO. **Defendant's compliance due by 7/3/2017.** Signed by Judge Carmen C. Cerezo on 6/26/2017. (mld) (Entered: 06/26/2017)
06/27/2017	4757	MOTION in Compliance *with Court Order at D.E. #4755*, MOTION for Joinder *of Co-Defendant 2 Carlos Rivera-Alejandro's Motion at D.E. #4730* by Joel Rivera-Alejandro. Responses due by 7/11/2017. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Milanes-Sanchez, Juan) (Entered: 06/27/2017)
06/27/2017	4762	ORDER on 4757 Motion in Compliance with 4755 Order: NOTED as to defendant Joel Rivera-Alejandro (1) joining docket entry 4730 filed by defendant Carlos Rivera-Alejandro (2) on 6/6/2017 on the 1:1 ratio of crack to cocaine. Signed by Judge Carmen C. Cerezo on 6/27/2017. (mld) (Entered: 06/27/2017)
07/14/2017	4787	RESPONSE in Opposition by USA as to Joel Rivera-Alejandro, Carlos Rivera-Alejandro re 4730 MOTION REQUESTING 1:1 CRACK TO POWDER COCAINE RATIO FOR SENTENCING AND RELATED MATTERS filed by Carlos Rivera-Alejandro, 4757 MOTION in Compliance *with Court Order at D.E. #4755* MOTION for Joinder *of Co-Defendant 2 Carlos Rivera-Alejandro's Motion at D.E. #4730* filed by Joel Rivera-Alejandro (Avila-Jimenez, Dina) (Entered: 07/14/2017)
07/14/2017	4789	RESPONSE in Opposition by USA as to Joel Rivera-Alejandro re 4659 Objection to Presentence Investigation Report filed by Joel Rivera-Alejandro (Avila-Jimenez, Dina) (Entered: 07/14/2017)
07/14/2017	4790	RESPONSE in Opposition by USA as to Joel Rivera-Alejandro re 4727 Sentencing Memorandum filed by Joel Rivera-Alejandro, Probation Office, USA (Avila-Jimenez, Dina) (Entered: 07/14/2017)
07/21/2017	4792	MINUTE ORDER re: defendant (1) Joel Rivera-Alejandro's 4757 joinder to docket entry 4730 filed by defendant (2) Carlos Rivera-Alejandro. **Sentencing Hearing of defendant (1) Joel Rivera-Alejandro scheduled for 7/17/2017 VACATED;** to be reset by separate Order. Signed by Judge Carmen C. Cerezo on 7/21/2017. (mld) (Entered: 07/21/2017)
07/21/2017	4793	MOTION Order to U.S.M.S. regarding Defendant remaining at MDC until Setencing Date, MOTION for Setting *Sentencing Hearing during week of 8/14-17/2017* by Joel Rivera-Alejandro. Responses due by 8/4/2017. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Milanes-Sanchez, Juan) (Entered: 07/21/2017)
07/21/2017	4794	ORDER granted in part and denied in part 4793 Motion for Order to USMS and to Set Sentencing Hearing. **U.S. Marshals Service shall NOT remove defendant Joel Rivera-Alejandro (1) from the jurisdiction** until further order by the Court. Signed by Judge Carmen C. Cerezo on 7/21/2017. (mld) (Entered: 07/21/2017)

08/23/2017	4808	MOTION for Setting *Sentencing Hearing (9/5/17 - 9/12/17)* by Joel Rivera-Alejandro. Responses due by 9/6/2017. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Milanes-Sanchez, Juan) (Entered: 08/23/2017)
08/29/2017	4814	MOTION to Withdraw as Attorney by ALR for Dina Avila-Jimenez filed by USA as to all defendants. Responses due by 9/12/2017. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Lopez-Rocafort, Alberto) Modified to edit docket text on 8/30/2017 (idg). (Entered: 08/29/2017)
09/21/2017	4822	MOTION to Withdraw as Attorney , MOTION to Appoint Counsel *Luz Rios*, MOTION for leave of court to file interim CJA voucher, Request to be removed from CM/ECF notifications filed by Joel Rivera-Alejandro. Responses due by 10/5/2017. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Attachments: # 1 Text of Proposed Order)(Milanes-Sanchez, Juan) Modified to edit text on 10/3/2017 (idg). (Entered: 09/21/2017)
10/27/2017	4827	ORDER denied 4730 Motion Requesting 1:1 Crack to Powder Cocaine Ratio for Sentencing as to Joel Rivera-Alejandro (1) and Carlos Rivera-Alejandro (2). Signed by Judge Carmen C. Cerezo on 10/27/2017. (mld) (Entered: 10/29/2017)
11/06/2017	4831	MOTION Requesting Order by Joel Rivera-Alejandro (1), pro se. (Attachments: # 1 Envelope) (idg) (Entered: 11/08/2017)
11/22/2017	4833	MINUTE ORDER as to Joel Rivera-Alejandro (1). Attorney Juan E. Milanes terminated. The Clerk of Court shall proceed to randomly assign CJA counsel immediately. Signed by Clerk on 11/22/2017. (nat) (Entered: 11/22/2017)
11/22/2017	4834	MINUTE ORDER as to Joel Rivera-Alejandro (1), Carlos Rivera-Alejandro (2). **Carlos Rivera-Alejandro (2) sentencing hearing is set for 2/15/2018 at 11:30 AM in Courtroom 4 before Judge Carmen C. Cerezo.** Signed by Clerk on 11/22/2017. (nat) (Entered: 11/22/2017)
11/22/2017		CJA 20 as to Joel Rivera-Alejandro (1): Appointment of Attorney Diego H. Alcala-Laboy for Joel Rivera-Alejandro. Signed by Judge Carmen C. Cerezo on 11/22/2017. (nat) (Entered: 11/27/2017)
11/27/2017	4835	NOTICE of Appearance of Diego H. Alcala-Laboy as to Joel Rivera-Alejandro (1). Responses due by 12/11/2017. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Alcala-Laboy, Diego) Modified to edit event on 11/28/2017 (idg). (Entered: 11/27/2017)
12/29/2017	4854	Transcript of Further Jury Trial as to Joel Rivera-Alejandro, Carlos Rivera-Alejandro, Alexis Rivera-Alejandro, Carlos E. Rivera-Rivera, Juan Rivera-George, Suanette Ramos-Gonzalez, Idalia Maldonado-Pena, Dolores Alejandro-Rodriguez held on April 22, 2015, before Judge Carmen C. Cerezo. Court Reporter/Transcriber Zulma M. Ruiz, Telephone number 787-772-3375. COA Number: 17-1432 as to IDALIA MALDONADO-PENA (47) only. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have